

**ANOTHER SURGE OF ILLEGAL IMMIGRANTS  
ALONG THE SOUTHWEST BORDER:  
IS THIS THE OBAMA ADMINISTRATION'S  
NEW NORMAL?**

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**HEARING**  
BEFORE THE  
SUBCOMMITTEE ON  
IMMIGRATION AND BORDER SECURITY  
OF THE  
COMMITTEE ON THE JUDICIARY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED FOURTEENTH CONGRESS  
SECOND SESSION

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## OFFICIAL HEARING RECORD

## UNPRINTED MATERIAL SUBMITTED FOR THE HEARING RECORD

Material submitted by the Honorable Zoe Lofgren, a Representative in Congress from the State of California, and Ranking Member, Subcommittee on Immigration and Border Security. This material is available at the Subcommittee and can also be accessed at:

*<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104402>.*

**ANOTHER SURGE OF ILLEGAL IMMIGRANTS  
ALONG THE SOUTHWEST BORDER: IS THIS  
THE OBAMA ADMINISTRATION'S NEW NOR-  
MAL?**

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**THURSDAY, FEBRUARY 4, 2016**

HOUSE OF REPRESENTATIVES  
SUBCOMMITTEE ON IMMIGRATION AND BORDER SECURITY  
COMMITTEE ON THE JUDICIARY  
*Washington, DC.*

The Committee met, pursuant to call, at 9 a.m., in room 2141, Rayburn House Office Building, the Honorable Trey Gowdy (Chairman of the Subcommittee) presiding.

Present: Representatives Goodlatte, Gowdy, Labrador, Smith, Conyers, Lofgren, and Gutierrez.

Staff Present: (Majority) George Fishman, Chief Counsel; Tracy Short, Counsel; Tanner Black, Clerk; (Minority) Gary Merson, Chief Counsel, and Maunica Sthanki, Counsel.

Mr. GOWDY. Good morning, this is the Subcommittee on Immigration and Border Security. This is a hearing on another surge of illegal immigrants along the southwest border. Today's date, Wednesday, February 4, 2016. The Subcommittee will come to order without objection. The Chair is authorized to declare recesses of the Committee at any time. We welcome everyone to today's hearing.

I would also just let everyone know kind of up front that the witnesses deserve to be heard and the Members deserve to ask their questions, and I do not anticipate any outburst or disorderly conduct, but my patience with that is zero. So this will be the one and only warning in that regard.

I will recognize myself for an opening. I will then recognize the Ranking Member. I want to let all of our witnesses know how grateful I am that you are here. I will need to leave to go next door for another hearing, but you will be in much more capable hands when I leave than you are currently, so it is no reflection on any of the witnesses. I will come back when I am able to do so.

Once again, we are witnessing a crisis at our southwest border as thousands of unaccompanied minors and adults are coming to the United States.

In 2014 we witnessed a massive wave of illegal immigration when over 68,000 unaccompanied minors and an equal number of

family units crossed our southwest border. In the past few months, the number of unaccompanied alien minors unlawfully entering the U.S. soared to over 17,000, and the number of family units increased to 21,000. If these trends continue, it is projected there will be a 30 percent increase in the record high numbers we witnessed in 2014. And those numbers in 2014 alone were alarming and concerning.

Secretary Johnson testified before the Appropriations Committee the message we are sending to people crossing the border is you will be sent home. Either that message has not been communicated, or it has not been received because the border crossings, the unlawful border crossings, continue.

This Administration claims these aliens are flooding our border to flee violence and poverty in their native countries and our government cannot do anything to stop it. However, based on their own intelligence reports, this Administration's policy of non-enforcement is, in fact, sparking the surge in the first instance.

Based on a report, nearly 60 percent said it was the Administration's immigration policies that influenced their decision to come to the United States. These are the same reasons provided by aliens who entered in 2014, and the vast majority of these aliens remain in the country today. In other words, no adequate steps have been taken to halt the surge or discourage aliens from attempting to enter the United States. We must at some point send a clear message to potential unlawful immigrants that discourage entry into our country. That would be in the best interests, frankly, of everyone.

Border patrol agents are currently prevented from initiating removal proceedings against aliens who are unlawfully present simply because there is not enough detention space to hold them. Lack of space is especially problematic when entire family units cross the border unlawfully. Ninety-eight percent of aliens in removal proceedings are not detained nor are they removed. Additionally, in order to place aliens in removal proceedings, agents are required to observe aliens physically crossing the border. Oftentimes, upon being approached by a border agent, aliens will claim to have been in the United States since January of 2014 despite the high improbability of such a claim.

This not only threatens our national security and public safety, it also endangers those unaccompanied minors risking their lives to travel to the United States. In hopes their children will arrive safely from Central America, current unlawful aliens residing in the United States are paying thousands of dollars to criminal organizations to transport their children across the border. These human smugglers have histories of alliance and allegiance with Mexican drug cartels and gangs. These children's lives are at risk during their journey to the United States, but it does not stop there. They also face dangerous situations upon arrival to the United States.

A recent Senate report found the Administration failed to properly conduct background checks on all persons with whom minors are placed, resulting in children being placed in the hands of abusive and exploitive sponsors. One account even found these children working as slaves on a farm.

In the words of the U.S. Customs and Border Patrol Commissioner, we could very well be seeing the new normal. And let me add this new normal is not acceptable at any level. A sovereign country is entitled to control who gains access to this country, how that access is gained, and in what capacity that access is gained and the duration of such access.

Legal immigration is a privilege this country conveys upon the terms and conditions that it sets. Illegal immigration is just that. It is illegal, and the motivations for such unlawful acts do not mitigate the criminality or diminish our responsibility to take care that the laws be faithfully executed. Actions have consequences. Actions send messages. Inaction has consequences as well, and the message seems to be if you can get here, no matter the method, you can stay. And that is wrong for everyone involved and most significantly the fellow citizens we take an oath to serve. Certain border states refuse to wait for action by an unwilling Administration. The Texas legislature, for example, has appropriated \$800 million over 2 years to combat the proliferation of smuggling and trafficking of aliens and drugs through Texas' southwest border.

So I will look forward to hearing from our witnesses from Texas to expand on that state's efforts to handle the surge. However, we should not leave the states to employ their own regulations. Securing the border and ensuring the safety of our citizens is a Federal responsibility. So I thank the witnesses for their appearances today. I look forward to hearing from each one of you, and with that, I would recognize the gentlelady from California.

Ms. LOFGREN. Thank you, Mr. Chairman. We are in the midst of a global refugee crisis, including in our own hemisphere. Women and children from the Central American Northern Triangle countries of El Salvador, Honduras, and Guatemala are coming to our borders seeking safe haven. And contrary to the Ranking Member's description of this as illegal immigration, in fact, our immigration laws provide for the possibility of asylum if you are fleeing violence and seeking safe haven in the United States.

Violence in these countries is paralyzing communities, preventing children from attending school, adults from earning a living, and even making public transportation a life-threatening endeavor. According to the Washington Office on Latin America, El Salvador's 2015 murder rate reached a level of violence not seen since the end of the country's civil war: 6,650 homicides in 2015 in a country of 6.3 million people, was approximately a 70 percent increase over 2014, making it the most violent country in the hemisphere. El Salvador has the second highest murder rate in the world, just behind Syria.

It is literally an epidemic by the World Health Organization's definition. And Honduras and Guatemala are not far behind. Honduras's murder rate is in the top five in the world, 10 times the world's average, and Guatemala's is in the top 20.

A 2015 report by the United Nations High Commission for Refugees, UNHCR, found that women in particular face a startling degree of violence in the Northern Triangle including rape, assault, extortion, and threats by armed criminal groups. One study estimated that over 80 individuals who came to the United States and were returned to El Salvador, Guatemala, and Honduras, have

been murdered since January of last year. Violence pervades every facet of life in the vast areas of these countries.

According to data shared by the Department of Homeland Security, 85 percent of Central American families who arrived since summer of 2014 and have been detained, establish threshold eligibility for refugee protection. The continued surge of Central American mothers and children at our southwest border is a humanitarian refugee issue, and not an illegal immigration phenomenon.

Some would have us believe that desperate women and children arriving and giving themselves up to Border Patrol officers shows that we are in a porous or uncontrolled border situation. But what is actually uncontrolled is the violence in these countries, not our borders. Very few, if any, of these women and children are eluding the Border Patrol in making their way into the interior of our country. Rather, they are immediately apprehended at our border, detained, and removal proceedings are initiated.

Yet our strategy of family detention, Spanish language communication campaigns in Central America urging people not to come to the United States, and financial assistance to Mexico to deter arrest and return those fleeing violence, has proven to be ineffective, and I am afraid that my colleagues want more of what has not worked: more deterrence, more border enforcement, more detention, more deportation. But until the situation in Central America is successfully addressed, desperate Central American mothers and children are going to continue to flee to the United States and seek protection. The refugee crisis in our hemisphere will only be resolved when the United States joins with other Nations in the Western Hemisphere in a comprehensive regional solution.

This should include refugee screening and resettlement, use of safe havens and appropriate third countries, not only the United States, a temporary protected status for those individuals in the U.S., the use of priority refugee processing, and other humanitarian remedies. It is critical that this approach include cooperation with other countries in the Western Hemisphere.

The violence in the Northern Triangle of Central America and the resulting refugee flow affects our entire region, and the United States' solution should include a regional refugee resettlement program, as well as increased capacity building of asylum systems in neighboring countries, not just the U.S.

For these reasons, I am pleased with the Administration's recently announced recognition that many Central American qualify as refugees under international law, and that we will be partnering with UNHCR to resettle refugees from El Salvador, Honduras, and Guatemala. I am cautiously optimistic that the use of third country temporary processing centers will provide protection for those who are unable to remain in their home country during the refugee processing period.

These are important and constructive steps toward a comprehensive regional refugee solution to address violence in the Central American region. However, this new Central American refugee resettlement program must not be used as a justification to deny or deter refugees from seeking asylum protection under our immigration laws here in the U.S. The U.S. has continued to be a beacon of safety and refuge for those seeking protection from persecution.

This new Central American refugee program should be an expansion of our efforts to provide refuge, not a substitute for existing asylum processes.

Women and children fleeing violence are a vulnerable population, and they should be treated with heightened sensitivity, awareness, and comprehensive access to counsel. We have a moral, as well as domestic and international legal obligation, to ensure that no mother or child is sent back to a country where they face torture or death. Every effort must be made to ensure that this vulnerable population has access to counsel and full due process protections prior to deportation.

I think it is well past time to start working toward a solution that provides a practical and humane response to the mothers and children from Central America fleeing for their lives and seeking safety and protection.

I would just close by noting that so many of the Members of this Committee have declared themselves to be pro-life, and I think this is an instance where those representations about being for life should be brought to the forefront. If we care about babies, we should care about 10-year-olds who are facing death if returned home, and I hope that this hearing will help enlighten us as to that issue, and I yield back, Mr. Chairman, the balance of my time.

Mr. GOWDY. The gentlelady yields back. The Chair will now recognize the gentleman from Virginia. The Chairman of the full Committee, Mr. Goodlatte.

Chairman GOODLATTE. Thank you, Mr. Chairman. Record numbers of unaccompanied alien minors and adults traveling with minors are again surging across our southern border, overwhelming Federal and state resources, creating a border security nightmare, and ensuring record profits for the criminal organizations that control the drug and human smuggling and trafficking business along the border. More than 152,000 unaccompanied minors and families are projected to illegally cross our southwest border this year. Some estimates project the number to top 177,000, the population of Fort Lauderdale, Florida. This would surpass the previous high mark in 2014 by nearly 30 percent.

These minors, more than two-thirds of whom are between the ages of 15 to 17, travel thousands of miles from Central America through dangerous desert areas controlled by Mexican drug cartels, and arrive at our southern border with tried and tested instructions from the smugglers leading them. "Find the first Border Patrol agent and claim asylum." This narrative is repeated thousands of times over, and there is little doubt that with every successful entry and reunification, it encourages thousands more to illegally enter and further degrades our border security.

We saw a similar surge of mass illegal immigration by unaccompanied minors and adults from Central America in 2014. Tragically, many were killed, assaulted, kidnapped, and extorted during their journey by the criminal elements that operate with impunity south of our border. This surge will undoubtedly produce similar victims.

Despite these tragic consequences of non-enforcement, there are no lessons learned by this Administration. A leaked DHS intelligence report shows the Obama administration's lax immigration

policies are fueling this current surge. During July through September 2015, customs and border protections agents interviewed 345 family units apprehended at the border. Nearly 70 percent said they had heard that if they came to the United States, they would be released, or receive some sort of immigration relief, such as asylum. Additionally, nearly 60 percent said it was the U.S. immigration policies that influenced their decision to come here. The unresponsiveness by President Obama to this clearly foreseeable crisis is truly shocking.

His instructions to Federal law enforcement agencies? Stand down. In some Border Patrol sectors, agents report that they are not allowed to initiate removal proceedings against criminal aliens who do not have a felony conviction. Aliens convicted of misdemeanors, and those who have pending felony charges, get a free pass. Agents also report that they are not authorized to initiate removal proceedings against adult aliens after apprehension at the border if no detention space is available. This is outrageous. Such aliens are supposedly the Obama administration's number one priority for removal. And such a policy is a beacon call for foreign nationals to cross our border undetected, including those who would do us harm.

There is no doubt that terrorists from ISIS-controlled countries are taking note of the lack of border enforcement. They have publicly announced they will infiltrate this country posing as refugees. Rather than taking even minimal steps to stem the flood of illegal immigration by simply allowing Federal and state law enforcement agencies to do what they do best, enforce the law, the Administration sent the commissioner of customs and border protection to the southwest border to survey the calamity.

His response? "We could very well be seeing the new normal." Americans do not want our government to throw up its hands and capitulate to the masses of foreign nationals illegally surging across our borders, as though it is inevitable. They want us to address the problem head on and solve it. It is not complicated. The President simply must have the will to secure our border.

But the grave consequences of the President's failed immigration policies extend beyond the debacle at the southwest border. They continue into the homeland. The custody and care of unaccompanied minors is entrusted to the Department of Health and Human Services, which places minors in the custody of qualified sponsors. Troubling reports indicated that HHS failed this most basic responsibility to place minors in a safe and secure environment. It did not properly screen prospective sponsors in several cases, resulting in minors being placed in the hands of human traffickers who exploited, threatened, and forced the minors to work.

More concerning is the fact that HHS systematically failed to conduct adequate background checks on the household members. And even if a background check revealed a felony conviction for a sponsor, it would not preclude the placement of the minor.

No crime is a per se bar to placement. This is deplorable and unacceptable. These failures highlight the irony of the Administration's misguided immigration policies. They encourage waves of illegal immigration by Central American minors who are victimized by criminal organizations along the way, only to arrive in the

United States and suffer further harm because of the failure of this Administration to ensure their proper care.

I look forward to hearing from the witnesses today on these important issues, and I thank them for appearing before the Subcommittee. Mr. Chairman, I yield back.

Mr. GOWDY. The Chairman yields back. The Chair will now recognize the gentleman from Michigan, the Ranking Member of the full Committee, Mr. Conyers.

Mr. CONYERS. Thank you, Mr. Chairman. And top of the morning to all of my colleagues. This morning, we are here to discuss the plight of thousands of refugees fleeing violence and persecution in Central America, the vast majority of whom are mothers and children. These desperate individuals are arriving at our southern border seeking refuge and humanitarian assistance in an effort to escape gang violence, violence toward children, domestic violence, and widespread political corruption. Unless we take immediate action to address these root causes of humanitarian crisis, refugee mothers and children from Central America will continue to suffer and seek refuge on our shores.

Among the measures we should undertake are the following: to begin with, we must first recognize that this crisis is humanitarian in nature, and not just a border security problem. It is a crisis that demands a regional response.

Secondly, this response should ensure that Central American mothers and children are able to live free from an endless cycle of violence and persecution. And third, we should partner with other Nations in the hemisphere to provide durable resettlement solutions.

The new program just announced last month by the State Department, with the support of the United Nations High Commissioner for Refugees, is a very encouraging step. This program will provide resettlement options for families within Central America and in other countries in our hemisphere. Addressing the crisis in the region will help desperate mothers and children avoid the dangerous journey through Mexico to the United States as the principle means of escape.

In addition, we must address the root causes of the humanitarian crisis. Resettlement solutions, whether in the United States or with the regional partners, are only a Band-Aid to an ongoing crisis of violence here at Honduras, Guatemala, El Salvador, generally referred to as the Northern Triangle.

Human rights organizations and Federal agencies agree that life, particularly for women and children in the Northern Triangle, is perilous. Murder rates in this region have the unwelcome distinction of being the highest in the world. But we should not lose hope. This crisis, while intractable, is not irreversible. We must assist the Northern Triangle in tackling the root causes of this violence, and help it create safe and economically-stable societies, such as through targeted foreign assistance and capacity building. Only then will the humanitarian crisis at our border truly subside.

And finally, we must recognize that even a fully developed regional solution will not prevent all Central American refugee mothers and children from arriving at our southern border. We have a moral as well as legal obligation to provide asylum seekers the op-

portunity to apply for humanitarian protection. Mothers and children requesting protection in the United States are not engaging in an illegal act. Rather, they are following our well-established asylum laws.

The legislative proposals that this Committee has considered this Congress are not the answer, because they would only result in mass deportation of vulnerable refugees. Deporting Central American refugee mothers and children to a region struggling with a major humanitarian crisis is, in my view, simply un-American. It reminds me of deportations to Haiti at the height of the post-earthquake cholera epidemic. Let's not repeat the mistakes of the past.

And so, I thank the witnesses for their presence and participation here today. I thank the Chairman, and I yield back the balance of my time.

Mr. LABRADOR [presiding]. Thank you. We have a very distinguished panel today. I will begin by swearing in our witnesses before introducing them, if you would please all rise.

[Witnesses sworn.]

Let the record show that the witnesses have answered in the affirmative. Thank you all, please be seated.

First, I will introduce Mr. Brandon Judd. Mr. Judd is a Border Patrol agent and serves as president of the National Border Patrol Council, representing more than 16,500 Border Patrol line agents. He brings with him nearly 20 years of experience as Border Patrol agent, fluency in Spanish, and a thorough understanding of the policies effecting border security. Judd started his career as a field agent in 1997. Thanks for being here today.

Next we have Mr. Steven McCraw. Mr. McCraw is the director of the Texas Department of Public Safety. He began his law enforcement career with DPS in 1977, as a trooper in the Texas Highway Patrol, and later as a DPS narcotics agent until 1983, when he became a special agent with the FBI. He served in Dallas, Pittsburgh, Los Angeles, Tucson, San Antonio, and Washington, D.C. In 2004 McCraw retired from the FBI to become the Texas Homeland Security director in the Office of the Governor, where he served for 5 years. Thanks for being here.

Next is Ms. Jessica Vaughan. Ms. Vaughan currently serves as the director of policy studies for the Center for Immigration Studies. She has been with the center since 1992, where her expertise is in immigration policy, and operations topics such as visa programs, immigration benefits, and immigration law enforcement. In addition, Ms. Vaughan is an instructor for senior law enforcement officer training seminars at Northwestern University Center for Public Safety in Illinois. Ms. Vaughan has a master's degree from Georgetown University, and earned her bachelor's degree in international studies at Washington College in Maryland.

And last but not least is Ms. Wendy Young. My Wendy Young is president of Kids in Need of Defense, KIND. She has spent more than two decades advocating for strong U.S. immigration and refugee laws, policies, and practices. Prior to joining KIND, Ms. Young worked for Senator Edward M. Kennedy as his chief counsel on immigration policy for the Senate Committee on the Judiciary. Ms. Young is a graduate of Williams College and holds JD and MA degrees from the American University.

Each of the witness' written statements will be entered into the record in its entirety. I ask that each witness summarize his or her testimony in 5 minutes or less. To help you stay within that time, there is a timing light in front of you, as you all are, I think, are pretty much aware of it. And the light will switch from green to yellow, indicating that you have 1 minute to conclude your testimony. When the light turns red, it indicates that the witness' 5 minutes have expired. And I recognize all of you to give your testimony. Mr. Judd. Is his microphone one? Microphone? I am not sure your microphone's on.

**STATEMENT OF BRANDON JUDD, PRESIDENT, AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES (AFGE), NATIONAL BORDER PATROL COUNCIL**

Mr. JUDD. Okay, sorry. As I was in church this past Sunday, my mind was preoccupied about this hearing and my testimony. I was thinking about what I could say to shed light on this current situation when one of the basic tenants of my religion's faith came to mind. We believe in being subject to kings, presidents, rulers, and magistrates and obeying, honoring, and sustaining the law.

All religions that I am aware of believe in rules, tenants, and commandments. It is not different with the laws of the United States. When persons, whether citizens or not, follow the laws of this great Nation, peace and prosperity abound. However, when those laws are broken on a large-scale, chaos is the byproduct, and make no mistake, chaos defines parts of our southwest border today.

Human and narcotic smugglers are constantly evolving to maintain or grow their profits. Unlike the Border Patrol, these criminal cartels operate without bureaucratic red tape. Cartels do not have to coordinate their efforts with the U.S. Attorney's Office, the Enforcement and Removal Office, Health and Human Services, or the Office of Civil Rights and Civil Liberties. Instead, the cartels see a problem and change their operations almost immediately.

At the Border Patrol, it can take over a year to adapt. There are several examples of how cartels break policies that I have given in my written statement, but I am going to skip those.

Today our largest trouble area is in Texas. Criminal cartels are once again proving adept at understanding and working around our policies. Late in the year of 2013 and throughout all of 2014, an unprecedented number of unaccompanied minors entered our country illegally through the Rio Grande Valley sector of operations. Instead of presenting themselves legally at ports of entry and asking for asylum, the unaccompanied minors were forced by the cartels to enter illegally at dangerous points along the border. In most cases, these minors were not trying to escape or evade apprehensions; they were simply crossing the border illegally and giving themselves up. The cartels understood that unaccompanied minors would force the Border Patrol to deploy agents to these crossing areas in order to take minors into custody, thereby creating large holes in the border. The creating of holes in the border, in Border Patrol operations, was only one benefit to the cartels by the unaccompanied minor surge. The other was the exploitation of our catch and release policy.

As this surge became too much to handle, the Border Patrol and the enforcement and removal office began releasing nearly everyone we arrested. I believe this release allowed the cartels to increase their smuggling profits. With catch and release, the cartels could credibly say to potential customers that they would be able to remain in the United States without fear of deportation as long as they asked for asylum upon being apprehended. Although the problem began with unaccompanied minors, as word quickly spread of everyone being released, we started to see more crossings of complete family units, leading to a bigger problem than what we had in 2014. And once again, we are playing catch-up to a problem that in part we created through policy.

All individuals that were released during this period of time were given an official document that ordered them to appear before an immigration judge at some future date. These orders are called Notices to Appear. The only problem, however, is that these official orders are usually ignored so much so that Border Patrol agents have dubbed them "Notices to Disappear."

The latest data that I have seen show that approximately 40 percent of the individuals being issued NTAs do not show up to their court proceedings. The willful failure to show up for court appearances by persons that were arrested and released by the Border Patrol has become an extreme embarrassment for the Department of Homeland Security. It has been so embarrassing that DHS and the U.S. Attorney's Office has come up with a new policy. Simply put the new policy makes mandatory the release without an NTA of any person arrested by the Border Patrol for being in the country illegally, as long as they do not have a previous felony arrest conviction, and as long as they claim to have been continuously in the United States since January of 2014.

The operative word in this policy is claim. The policy does not require the person to prove they have been here, which is the same burden placed on them during deportation proceedings. Instead, it simply requires them to claim to have been here since January of 2014. Not only do we release these individuals that by law are subject to removal proceedings, we do it without any means of tracking their whereabouts. In essence, we pulled these persons out of the shadows and into the light just to release them right back to those same shadows from whence they came.

Immigration laws today appear to be merely suggestions. There are little to no consequences for breaking the laws, and that fact is well known in other countries. If government agencies like DHS or CBP are allowed to bypass Congress by legislating through policy, we might as well abolish our immigration laws all together.

I believe it is all our hope that people choose to govern themselves by honoring and sustaining the laws without compulsion. However, if they do not there, must be a consequence, and an enforcement mechanism that oversees compliance. In the absence of consequences and enforceable laws, innocent people are hurt, criminals are rewarded, chaos abounds, and cartels reap huge financial benefits. I look forward to answering any of your questions. Thank you.

[The prepared statement of Mr. Judd follows:]



## National Border Patrol Council

**Testimony of Brandon Judd**  
**On behalf of the**  
**National Border Patrol Council**  
**In front of The House Judiciary Committee, Subcommittee on Immigration and Border**  
**Security**  
**February 4, 2016**

As I was in church this past Sunday, my mind was preoccupied about this hearing and my testimony. I was thinking about what I could say to help shed light on our current situation when one of the basic tenets of my religion's faith came to mind:

"We believe in being subject to Kings, presidents, rulers and magistrates in obeying, honoring and sustaining the law."

All religions, that I'm aware of, believe in rules, tenants and commandments. It's no different with the laws of the United States; persons, whether citizens or not, follow the laws of this great nation, peace and prosperity abound. However, when those laws are broken on a large scale, chaos is the byproduct. And make no mistake, chaos defines parts of our southwest border today.

Human and narcotics smugglers are constantly evolving to maintain or grow their profits. Unlike the Border Patrol, these criminal cartels operate without bureaucratic red tape. Cartels do not have to coordinate their efforts with the U.S. Attorney's Office, the Enforcement and Removal Office, Health and Human Services, or the Office of Civil Rights. Instead, the cartels see a problem and change their operations almost immediately. At the Border Patrol, it can take over a year to adapt.

In the late 1990s as a young Border Patrol Agent, I witnessed first-hand how adept these criminal cartels were at exploiting our policies. While I was working in the Buttercup Dunes in the remote California desert, smugglers would drive their products across the United States/Mexico International Boundary, easily making it to Interstate 8 just a few hundred yards away. In almost all cases the smugglers would drive west towards El Centro, California. If we attempted to stop the vehicle, the smugglers would drive across the median and continue west in the eastbound lanes and into oncoming traffic. At night it was worse, the smugglers would turn their headlights off as they drove into the oncoming traffic. The moment they crossed the median and began driving into oncoming traffic, we had to immediately terminate our pursuit.

The policy was that it was better for narcotics and illegal immigrants to enter the United States without apprehension than to put the general public at risk of vehicle accidents. Whether you believe this policy was sound or not, it was a policy that was exploited by the cartels. It took years for the Border Patrol to install vehicle barriers in this area and stop these drive throughs from taking place. During that time the cartel more or less operated with impunity.

Similarly, in the early 1990s, El Paso, Texas, and San Diego, California, were ground zero for illegal immigration into the United States. It was easy for drug smugglers and human traffickers to make a quick sprint across the border and immediately get lost in the larger population. In an effort to control these major corridors, the Border Patrol concentrated the vast majority of its manpower and resources on these two areas. No one thought smugglers would adapt by moving their operations to the inhospitable deserts of Southern Arizona. Nothing however could be further from the truth and the scale of illegal immigration in Arizona from 1998 through 2010 was unprecedented.

Another example was the 500 pound marijuana smuggling threshold the U.S. Attorney's office imposed on the Border Patrol in the mid-2000s. Due to prosecutorial discretion, Border Patrol Agents were not allowed to refer for prosecution anyone who smuggled or attempted to smuggle less than 500 pounds of marijuana into the country. Not surprisingly we started making quite a few 480 pound seizures.

Today our largest trouble area is in Texas. Criminal cartels are once again proving adept at understanding and working around our policies. Late in the year of 2013 and throughout all of 2014, an unprecedented number of unaccompanied minors entered our country illegally through the Rio Grande Valley Sector of operations. Instead of presenting themselves legally at Ports of Entry and asking for asylum, the unaccompanied minors were forced by the cartels to enter illegally at dangerous points along the border. In most cases, these minors were not trying to escape or evade apprehension, they were simply crossing the border illegally and giving themselves up.

The cartels understood that the unaccompanied minors would force the Border Patrol to deploy Agents to these crossing areas in order to take the minors into custody. I want to stress this point because it has been completely overlooked by the press. The unaccompanied minors could have walked right up to the Port of Entry and asked for asylum. Why did the cartels drive them to the middle of the desert and then have them cross over the Rio Grande only to surrender to the first Border Patrol Agent they came across? The reason is that it completely tied up our manpower and allowed the cartels to smuggle whatever they wanted across our border.

The creating of holes in Border Patrol operations was only one benefit to the cartels by the unaccompanied minor surge. The other was the exploration of our "catch and release" policy. As this surge became too much to handle, the Border Patrol and the Enforcement and Removal Office began releasing nearly everyone we arrested.

I believe this release allowed the cartels to increase their smuggling profits. With catch and release, the cartels could credibly say to potential customers that they would be able to remain in the United States without fear of deportation as long as they asked for asylum upon being apprehended. Although the problem began with unaccompanied minors, as word quickly spread of everyone being released, we started to see more crossings of complete family units, leading to a bigger problem than what we had in 2014. And once again we are playing catchup to a problem that in part we created through policy.

All individuals that were released during this period of time were given an official document that ordered them to appear before an immigration judge at some future date. These orders are called Notices to Appear (NTA). The only problem, however, is that these official orders are usually ignored, so much so that Border Patrol Agents have dubbed them Notices to Disappear. The latest data that I have seen shows that approximately 40 percent of the individuals being issued NTAs do not show up.

The willful failure to show up for court appearances by persons that were arrested and released by the Border Patrol has become an extreme embarrassment for the Department of Homeland Security. It has been so embarrassing that DHS and the U.S. Attorney's office has come up with a new policy.

Simply put, the policy makes mandatory the release, without an NTA, of any person arrested by the Border Patrol for being in the country illegally, as long as they do not have a previous felony arrest conviction and as long as they claim to have been continuously in the United States since January of 2014. The operative word in this policy is "claim." The policy does not require the person to prove they have been here which is the same burden placed on them during deportation proceedings. Instead, it simply requires them to claim to have been here since January of 2014.

Not only do we release these individuals that by law are subject to removal proceedings, we do it without any means of tracking their whereabouts. Agents believe this exploitable policy was set in place because DHS was embarrassed at the sheer number of those who choose not to follow the law by showing up for their court appearances. In essence, we pull these persons out of the shadows and into the light just to release them right back to those same shadows from whence they came.

Let me give you an example from my sector in Montana. Several months ago we arrested an illegal alien with a felony domestic violence arrest from another state. He was released because his trial had not occurred and therefore had not been convicted. Mind you he had not been acquitted either but we had to let him go all the same.

Under the law he should have been set up for removal proceedings, but under the policy he was let go. And he was let go even though he first proved that he cared so little about our laws that he entered the United States illegally, and once here, he proved further disdain by getting arrested for a serious violent act against another. What did we teach him and everyone else he undoubtedly told about his experience? We taught him our laws mean very little, but policies mean everything.

Immigration laws today appear to be mere suggestions. There are little or no consequences for breaking the laws and that fact is well known in other countries. If government agencies like DHS or CBP are allowed to bypass Congress by legislating through policy, we might as well abolish our immigration laws altogether.

I believe it is all our hope that people choose to govern themselves by honoring and sustaining the laws without compulsion. However if they do not, there must be a consequences and an enforcement mechanism that oversees compliance. In the absence of consequences and enforceable laws innocent people are hurt, criminals are rewarded, chaos abounds, and cartels reap huge financial benefits.

I look forward to answering any of your questions.

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Mr. LABRADOR. Mr. Judd. Mr. McCraw?

**STATEMENT OF STEVEN C. McCRAW, DIRECTOR,  
TEXAS DEPARTMENT OF PUBLIC SAFETY**

Mr. McCRAW. Mr. Chairman, and honorable Members, thank you for the opportunity to be here today. My name is Steve McCraw. I am the executive director of the Department of Public Safety and colonel, and also the Homeland Security advisor for Governor Greg Abbott. Congressman Smith, it is great to see your friendly face from Texas, and I know you will be down there meeting with the Border Patrol secretary Manny Padilla and Raul Ortiz here later on, and I know they are looking forward to seeing you. I think you will get a great read from border control. They do a great job down there, the Rio Grande Valley Force.

In an ever-changing threat environment, clearly we have seen, as it relates to crime, it is increasingly transitory. It is organized, even more violent, and also the discrete and networked. And at the same time, we have seen terrorism be more disaggregated. And that is very concerning. I know it is concerning for the governor. It is concerning for members of the Texas state legislature, because the result is consequences that we were not intending, and some things you are not even talking about today. And I would agree entirely that there are victims coming across.

Those children, when they show up, they are victims, and as the agent just said next to me, when they get turned back over to the cartels, that they are victims. They are a commodity, and if you look at the sex traffic alone of children that were induced to come to Texas from Central America and Mexico and sit on those wire taps, work those cases, you realize the terms of the consequences that unsecure border is significant. And the governor and the state legislature have made it clear from the Department of Public Safety standpoint is that it, "Hey, when it is unsecure, Texas is unsecure. The Nation's unsecure."

If you have a drug epidemic in the northeast, relates to heroin, you got a cartel and an unsecure border problem. If you have MS-13 in your neighborhood, they are plundering and raping, you have got a border problem as it relates to transnational crime. That is the bottom line in terms if you relate to it. It does not just stop at the border.

And who would have thought that Texas border sheriffs and chiefs of police would have to invent new categories of crime? Stash house extortions, for example, which is in elaborate splashdowns. Pseudo cop stops, home invasions. You know, and the ending recruitment of our children in criminal element in the areas by plaza bosses to support their criminal operations on both sides of the border.

So these things are happening, yet it is not talked about. But clearly, you know, Texas understands that impact. So much so that the governor, and it was mentioned before by the Chairman, the governor and the state legislature have dedicated \$800 million directly to support border control operations. I say Border Patrol operations because they are truly our partners, and as they go, so does the security of our Nation. And from the Texas standpoint, you invest in Border Patrol, you invest in national security, you in-

vest in public safety. And we are lined up with them. And we have been tasked since June the 23rd to conduct around-the-clock operations with them, with our local partners, to coordinate air, Marine, and ground operations, tactical operations. We put troopers into our Border Patrol units right now, 30 units around the clock. We have tactical operations with Texas Ranger recon operations, a SWAT that marries up with BORTAC .

There is a sense of urgency because we realize, even at the height in June 2014, the height of the unaccompanied children coming across, and as devastating that was and impactful, it clearly was a cartel tactic. They make money on both sides, and they overwhelm Border Patrol.

Just 17 percent of the apprehensions were children in family units. That is it. Seventeen percent. And our directive is to focus on cartels, cartel operatives, transnational gangs like MS-13 that are now overwhelmed parts of Texas, like Houston. And also, the focus on the drugs, that they engage in. Heroin. Mentioned it before in terms of the epidemic across the Nation right now. Cocaine, methamphetamine; they dominate the methamphetamine market and sex trafficking and human trafficking, and that is what we face.

And as the borders remain unsecure, which clearly they are, there is no doubt about that, and so does, you know, public safety vulnerabilities and national security vulnerabilities. And our mandate has been very clear. We have been operational. When I say operational, it does not mean anything to anybody, you know, probably here, but it does when you have got troopers and agents and Texas Rangers that have been deployed around the clock. They move down every week. They do 7 days straight operations with no breaks and they work 12 to 14 hours a day on the river, in the air, on the ground with our Border Patrol partners, because it is too important to the state security and every day we see victims.

So as a result of that, you know, our operations have been married up with, like I said before, with Border Patrol. We will be continuing to doing this and we have received great support obviously from our local partners and from Border Patrol.

And I guess there is one thing that I would like to stress, if I had not said Border Patrol enough, is that they need to be resourced, bottom line is. And I will say this, and you will find on my testimony, when you cut back on aviation assets. So the Border Patrol, that means National Guard, when they have UH-72s that are taken offline and you cut it by 50 percent, that is a problem. That directly affects officer safety and by the way, officers get shot at from Mexico. You never hear about that. No one comes to the Border Patrol's defense when that happens. I think my time is up, so I will shut up.

[The prepared statement of Mr. McCraw follows:]

Steven C. McCraw  
Director  
Texas Department of Public Safety

February 4, 2016

Judiciary's Subcommittee on Immigration  
and Border Security

Steven C. McCraw  
Director  
Texas Department of Public Safety  
February 4, 2016

Good morning, Chairman Gowdy and distinguished members of the Subcommittee on Immigration and Border Security. My name is Steven McCraw. I am the Director of the Texas Department of Public Safety (DPS), and I would like to thank you for the opportunity to testify before you today on this vitally important issue of an unsecured border with Mexico and the consequences it has had, and will have, for the state of Texas and communities throughout the country.

In an ever-changing threat environment where crime is increasingly transitory, transnational, organized, and discreet, and where terrorism has become more disaggregated, an unsecured border with Mexico represents a grave national security vulnerability. The porous border with Mexico provides cartels a reliable means to infiltrate this country allowing them to smuggle and traffic marijuana, cocaine, heroin, methamphetamine and people into and throughout the United States. In Mexico, the cartels engage in petroleum theft, kidnappings, robberies, human trafficking, extortions and murders for profit. Cartels employ terrorism tactics, strategies and corruption to protect their criminal operations, and they pose a serious threat to Texas and the United States as well as to the domestic security of Mexico, one of our nation's most important economic trading partners.

Texas Governor Greg Abbott and the Texas Legislature understand that securing our nation's border with Mexico is the sovereign responsibility of the federal government, however, the federal government has failed to adequately provide the appropriate resources to secure our international border with Mexico. That failure has forced the State of Texas to spend millions of dollars of state money to fulfill what is a federal responsibility.

Governor Abbott has long-recognized the gravity of this situation and in his first year in office, he signed into law the toughest border security program in the nation. As part of his plan, more than \$800 million has been appropriated over the next two years to add more resources, more manpower and more assets toward securing our border. This includes state-of-the-art aerial assets, enhanced land and maritime patrols, advanced monitoring technology, enhanced communication capabilities, 250 new state troopers, a new company of Texas Rangers, pilots, additional support personnel, increased overtime and funding to conduct sustained surge operations in high threat areas.

In fact, in response to federal inaction dating back to June 2014, the DPS was then directed by state leadership to launch Operation Strong Safety, and most recently, Operation Secure Texas, as a multi-agency collaborative effort to deny Mexican cartels and their associates unfettered entry into Texas, and their ability to commit border-related crimes, as well as reduce the power of these organizations, whose success depends on their ability to operate on both sides of the border. In total, Texas has designated roughly \$1.7 billion in state funds since 2005 to amplify border security efforts. With the increased funding authorized by our state leaders, Texas is

further intensifying its border security operations by providing direct assistance to the U.S. Border Patrol to deter, detect and interdict smuggling along the Texas/Mexico border through the deployment of an integrated network of detection and communication technologies and an increase in ground, air and marine interdiction assets.

These additional resources will also allow DPS to expand current efforts with our local partners, as well as federal partners and the Texas Border Prosecution Unit to degrade the smuggling infrastructure used by the cartel plaza bosses to smuggle drugs and people into Texas. And the number of public corruption investigations along the border will increase with the additional Texas Rangers working with the FBI's Public Corruption Task Force. Additionally, this also increases the funding for local law enforcement and border county prosecutors and expands the Texas Anti-Gang program to crack down on the gangs who support Mexican cartel smuggling and trafficking operations throughout the state. Again, these increased efforts would not be possible without additional resources provided by Governor Abbott's Office and the Texas Legislature.

The current epicenter of this smuggling activity is the Rio Grande Valley of Texas and is further complicated by the recent surge of migrants from Central America and Cuba along the Southern border. As mentioned, the state of Texas leadership has repeatedly called upon the Department of Homeland Security (DHS) for additional assets and resources for the U.S. Border Patrol and the Office of Field Operations to strengthen our border defenses and combat transnational criminal activity along the Texas-Mexico border. Unfortunately, even the September, 2015, request from Governor Abbott to DHS for additional aerial observation and other resources has gone unanswered. As a result, in December, 2015, Governor Abbott directed the following actions:

- Extend the deployment of the National Guard troops at strategic locations on the border intended to reduce illegal entry;
- Instruct the Texas Department of Public Safety to coordinate with the Texas Parks & Wildlife Department to increase the number of boats and tactical officers at strategic locations on the Rio Grande River;
- Instruct the Department of Public Safety to increase aerial observation missions to aid interdiction efforts;
- Provide Grants to Ellis and Rockwall Counties to aid their efforts to respond to the unexpected relocation of unaccompanied minors to their counties.
- Re-urge the Department of Homeland Security to increase border patrol agents in Texas.

Most recently, DHS requested a fifty percent reduction of persistent aerial detection, situational awareness, and monitoring support for Operation Phalanx from the Department of Defense. This request is troubling, given the additional resources requested by Governor Abbott last September. Any decrease in aerial observation is not only imprudent, but contradicts the very mission of comprehensive border security enforcement. Just a few days ago, Governor Abbott joined Texas Congressman Henry Cuellar whose district is losing fifty percent of the aerial surveillance in requesting the Department of Homeland Security explain why the federal government is pulling back on border enforcement. Texas provides extensive manpower,

resources and oversight in support of Operation Phalanx, and expects the federal government to similarly fulfill its obligation to secure the border.

Despite this setback, with the support from our state's leadership, DPS will continue working with its local and federal partners to target transnational criminal activity including drug trafficking, labor trafficking, sex trafficking and money laundering in key Texas transshipment and trafficking centers and other impacted areas throughout the state. As discussed, Governor Abbott and the Texas Legislature have invested a substantial amount of state resources in border security at a time when the state has many other vital priorities such as education, transportation and public health; however, there is an understanding in Texas that protecting our citizens is a fundamental responsibility of government, and they have committed to doing whatever is necessary to protect the people of Texas. That said, make no mistake that Governor Abbott and the Texas legislature fully expect to be reimbursed by the federal government as this action would not be necessary if the federal government fulfilled its obligation to secure our nation's border.

In Texas, we understand the importance of close partnerships and unity of effort in combating crime and terrorism. It is important to note that it is our local law enforcement community along the Texas/Mexico border also serves on the front line in protecting our citizens from transnational crime. To that end, we combine the capabilities and expertise of border sheriffs, chiefs of police, Texas Military Forces, and other essential state and local law enforcement agencies, including constables and state game wardens to assist our U.S. Border Patrol partners with their vitally important mission.

In addition, the type and amount of resources that DPS has committed to this vital federal mission does not adequately reflect the substantial additional resources provided by local law enforcement, Texas Military Forces and Texas Parks and Wildlife. Texas employs a unified command structure to coordinate ground, marine, and air resources around-the-clock and we have developed contingency plans to address a myriad of transnational threats. Importantly, we enhance the impact of border security operations by degrading the smuggling structure operating within our border communities through multiagency investigations and prosecutions that target key drug and human smuggling networks essential to cartel operations.

The impact of Operation Secure Texas reaches far beyond the immediate border area, because as we know, human and drug trafficking impact the entire country and represents a threat to both public safety and national security.

For instance, if a community in this country has a drug problem – such as the current heroin addiction epidemic and explosion of heroin-related deaths in the northeast region of United States – they have a Mexican Cartel and insecure border problem and if a community is plagued by transnational gangs such as MS-13 and MS-18, they have an insecure border problem.

Rather than waiting for the effects of Mexican cartel activity to further penetrate our Texas communities and other states, Texas has chosen to fight the problem at the source – the porous border with Mexico. The foremost priority of Texas Sheriffs, Chiefs of Police and other local

and state law enforcement agencies in the Texas border region has been and will continue to be the protection of its citizens from all threats including transnational crime and our second priority is to assist the U. S Border Patrol in securing the Texas-Mexico border which directly relates to our first priority.

I would also like to recognize and commend the brave men and women of the U. S. Border Patrol for their laudable actions in addressing their formidable responsibilities with the limited resources they have been provided. We are grateful for their dedication to keeping our nation safe from an array of public safety and homeland security threats, while facing incredible challenges every day.

Lastly, I would like to thank you, Chairman Gowdy and the other distinguished members of this subcommittee for your unwavering commitment to securing our nation's borders in a way that helps ensure the safety of all Americans.

[Attached is the strategic intent, activity and the current level of DPS resources dedicated to the ongoing surge operation in Texas.]

## ***Texas Border Security***

### **Strategic Intent**

The Texas Department of Public Safety (DPS) will provide direct assistance to U.S. Customs and Border Protection to deter, detect and interdict smuggling along the Texas/Mexico border through the deployment of an integrated network of detection and communication technologies and an increase in ground, air and marine interdiction assets.

DPS will work with its local and federal partners and the Border Prosecution Unit to degrade the smuggling infrastructure used by the cartel plaza bosses to smuggle drugs and people into Texas.

The Texas Rangers will work with the Border Prosecution Unit and our federal partners to deter smuggling related corruption along the border by increasing the number of public corruption investigations, arrests and prosecutions.

DPS will work with its local and federal partners to target transnational criminal activity including drug trafficking, labor trafficking, sex trafficking and money laundering in key Texas transshipment and trafficking centers and other impacted areas throughout the state.

### **(I) DPS Deterrence and Detection Assets Deployed**

DPS continues to enhance the level of detection coverage directly on the border with increases in tactical boats, the deployment of motion detection cameras, increases in camera installation capacity, increases in the number of helicopters capable of using FLIR day and night, assessing the viability of contracting for Aerostat coverage, acquisition of a high-altitude border surveillance aircraft, and the integration of all essential detection, tracking and communication technologies.

#### **A. DPS Maritime Assets**

The State of Texas has deployed DPS and TPWD boats on the Rio Grande River to deter and detect smuggling activity.

DPS Boats Assigned to the Border:

| <b>Tactical Boats</b>        | <b>Deployed</b> | <b>Pending</b> | <b>Totals</b> |
|------------------------------|-----------------|----------------|---------------|
| <b>Medium and Deep Water</b> | 6               | —              | 6             |
| <b>Shallow Water</b>         | 2               | 2              | 4             |
| <b>Extreme Shallow Jet</b>   | —               | 3              | 3             |
| <b>Total</b>                 | 8               | 5              | 13            |

|                                                                                                               |           |
|---------------------------------------------------------------------------------------------------------------|-----------|
| Full-time Personnel:                                                                                          | 22        |
| Personnel Temporarily Deployed to OST:                                                                        | 18        |
| Additional Overtime FTE Equivalents from working OT:                                                          | 30        |
| DPS Officers temporarily deployed to the border work 12-14 hour shifts with no days off to increase coverage. |           |
| <b>Total Personnel Strength:</b>                                                                              | <b>70</b> |

#### **B. Ground Sensors**

The State of Texas does not have motion-detection ground sensors; however, U.S. Border Patrol sensors are monitored by DPS Aircraft that receive direct alerts when activated, and DPS Aircraft provide confirmation and coordinate interdiction efforts.

#### **C. Detection Cameras**

The State of Texas has implemented a camera detection program leveraging low-cost, high-capability motion-detection and low-light camera technology. Through this program, detections are immediately relayed to U.S. Border Patrol and DPS Command Posts, and directly to interdiction assets on the ground and DPS surveillance aircraft. The Texas Rangers and the U.S. Border Patrol work closely together to dramatically expand the ability to detect smuggling events in real time through this program.

##### ***i. DPS Installation Team***

U.S. Border Patrol Technical Agents have installed and provided maintenance service for the vast majority of these cameras to date. Most recently, the DPS Special Operations Group has provided installation support to U.S. Border Patrol. To further increase capacity, DPS has established an installation team using Texas State Guard personnel.

|                                               |     |
|-----------------------------------------------|-----|
| Number of New Installations in November 2015: | 225 |
| Texas State Guard Personnel Assigned:         | 7   |

##### ***ii. Detection Cameras Deployed\****

| Cameras Deployed         | Last 60 Days | Last 12 Months | Operational Total |
|--------------------------|--------------|----------------|-------------------|
| Rio Grande Valley Sector | 165          | 1,153          | 1,338             |
| Laredo Sector            | 193          | 266            | 297               |
| Del Rio Sector           | 96           | 495            | 551               |
| Marfa Sector             | 17           | 77             | 104               |
| El Paso Sector           | 13           | 17             | 24                |
| <b>Totals</b>            | <b>484</b>   | <b>2,008</b>   | <b>2,314</b>      |

\*1,015 cameras were deployed prior to operational period beginning June 2014 for a total of 3,329 detection cameras.

#### D. Aerostats

Aerostats are buoyant balloons that remain tethered to the ground and are used to provide fixed long distance visual and radar coverage of an area. The U.S. Customs and Border Protection (CBP) currently operate three Aerostats on the border in the Rio Grande Valley. Texas Gov. Greg Abbott has requested that the U.S. Department of Homeland Security provide CBP with five additional Aerostats to operate on the Texas-Mexico border.

|           | Deployed | Pending | Totals |
|-----------|----------|---------|--------|
| Aerostats | 3 (CBP)  | (DPS)*  | 3      |
| Total     | 3        | --      | 3      |

\*DPS' Request for Information to assess viability of the state contracting for increased Aerostat coverage is pending.

#### E. Aviation Assets

The State of Texas has deployed DPS and Texas Military Forces aircraft to detect smuggling attempts along the Texas-Mexico border and to assist in interdicting those attempts. The fixed-wing aircraft receive direct alerts from U.S. Border Patrol ground sensors and DPS motion-detection camera activations, and the helicopters receive the DPS motion-detection camera alerts. All DPS aircraft can communicate directly with U.S. Border Patrol Agents and Troopers on the ground.

| DPS Aircraft with Advanced Detection and Communications | Deployed | Pending | Totals |
|---------------------------------------------------------|----------|---------|--------|
| Helicopters                                             | 11*      | --      | 11     |
| Mid-Altitude Fixed Wing                                 | 2        | --      | 2      |
| High-Altitude Fixed Wing                                | 1        | 1**     | 2      |
| Total                                                   | 14       | 1       | 15     |

\*DPS helicopters in Longview and Waco have been reassigned to the border.

\*\*An additional high-altitude aircraft for DPS was approved by the Texas Legislature and is in the procurement process.

|                                                          |    |
|----------------------------------------------------------|----|
| Pilots and Tactical Flight Officers Permanently Assigned | 25 |
| Pilots and TFOs Temporarily Deployed to OST:             | 8  |
| Additional Overtime FTE Equivalents from working OT:     | 4  |
| Total Personnel Strength:                                | 37 |

**(II) Interdiction**

Once detected, it is important the smugglers either be interdicted or denied entry, which requires a well-coordinated and timely law enforcement response that can only be achieved with a sufficient number of personnel staffed around the clock.

**A. Troopers**

|                                                        |              |
|--------------------------------------------------------|--------------|
| Troopers Currently Permanently Assigned:               | 563          |
| New Permanent Trooper Positions Hired and Deployed:    | 124          |
| Troopers Temporarily Deployed to OST from other areas: | 230          |
| Additional Overtime FTE Equivalents from working OT:   | 313          |
| <b>Total Trooper Strength:</b>                         | <b>1,230</b> |

**B. Cortina Units**

Cortina Units are joint DPS and U.S. Border Patrol interdiction teams.

|                            |           |
|----------------------------|-----------|
| <b>Total Cortina Units</b> | <b>30</b> |
|----------------------------|-----------|

**C. Tactical Operations**

DPS Special Operations Group and U.S. Border Patrol Special Operations conduct joint tactical operations in remote and high-threat areas. The Texas Rangers oversee DPS tactical operations, which include Ranger Recon teams, the DPS Special Weapons and Tactics (SWAT) team, and six Regional Special Response Teams (SRT).

**D. Logistics and Planning**

|                                                              |          |
|--------------------------------------------------------------|----------|
| Logistical and Planning Experts Permanently Assigned:        | 4        |
| Logistical and Planning Experts Temporarily Deployed to OST: | 4        |
| <b>Total Personnel Strength:</b>                             | <b>8</b> |

**E. Intelligence and Information Sharing**

The Joint Operations Intelligence Centers (JOIC) centralize all of the border incident data across 53 counties and 171 law enforcements agencies to provide a shared view of the threat picture and trending patterns.

|                                        |    |
|----------------------------------------|----|
| Joint Operations Intelligence Centers: | 6  |
| Texas Rangers:                         | 2  |
| DPS Border Liaison Officers:           | 6  |
| State Guard Personnel:                 | 35 |

|                                                           |           |
|-----------------------------------------------------------|-----------|
| HQ Intelligence Analysts Permanently Assigned:            | 10        |
| Border Region Intelligence Analysts Permanently Assigned: | 11        |
| Intelligence Analysts Temporarily Deployed to OST:        | 4         |
| <b>Total Personnel Strength:</b>                          | <b>68</b> |

#### **F. Communications**

|                                                       |           |
|-------------------------------------------------------|-----------|
| Communications Operators Permanently Assigned:        | 24        |
| Communications Operators Temporarily Deployed to OST: | 4         |
| <b>Total Personnel Strength:</b>                      | <b>28</b> |

#### **(III) Targeting the Smuggling Infrastructure**

The arrests of members and associates of smuggling groups and criminal networks operating in the border region, such as cartel operatives, statewide and regional gangs, transnational criminal gangs, wanted and convicted felons, and criminal aliens, degrades the smuggling infrastructure and increases community safety.

|                                             |            |
|---------------------------------------------|------------|
| Special Agents Permanently Assigned:        | 167        |
| Special Agents Temporarily Deployed to OST: | 25         |
| Additional Overtime FTE Equivalents:        | 61         |
| <b>Total Agent Strength:</b>                | <b>253</b> |

Inter-Agency Targeting Team (ITT): 5 U.S. Border Patrol Agents, 2 DPS Special Agents, 1 Trooper, 1 DPS Intelligence Analyst

#### **(IV) Targeting Border Corruption**

The Mexican cartels seek to corrupt individuals and institutions on both sides of the border to support their smuggling operations. Successful investigations degrade the cartels' smuggling ability and serves as an important deterrent to those who would betray public trust and the rule of law.

|                                            |           |
|--------------------------------------------|-----------|
| Texas Rangers Permanently Assigned*:       | 45        |
| Texas Rangers Temporarily Deployed to OST: | 7         |
| Additional Overtime FTE Equivalents:       | 17        |
| <b>Total Personnel Strength:</b>           | <b>69</b> |

*\*Texas Rangers also assist local law enforcement agencies in the investigation of major crimes such as homicides, kidnappings, robberies and sexual assaults.*

1,214 FTE assigned personnel plus 425 additional overtime FTE equivalents. DPS Officers temporarily deployed to the border work 12-14 hour shifts with no days off to increase coverage

Total DPS FTE support to OST Operations: 1,763

*\*Does not include the number of DPS Special Operations Group Personnel assigned to border tactical missions.*

### **DPS Operational Activities**

#### **Criminal/High Threat Criminal Arrests in the Border Region**

|                      |                              | Last 60 days<br>(11/15-12/15) | Last 12 months<br>(01/15-12/15) | Operation total<br>(6/14-12/15) |
|----------------------|------------------------------|-------------------------------|---------------------------------|---------------------------------|
| Texas Highway Patrol | High Threat Criminal Arrests | 300                           | 1,893                           | 2,768                           |
|                      | Total Criminal Arrests       | 2,003                         | 12,207                          | 17,487                          |
| DPS Special Agents   | High Threat Criminal Arrests | 66                            | 726                             | 1,054                           |
|                      | Total Criminal Arrests       | 284                           | 2,094                           | 3,169                           |
| Texas Rangers        | High Threat Criminal Arrests | 37                            | 263                             | 399                             |
| DPS Total            | High Threat Criminal Arrests | 403                           | 2,882                           | 4,221                           |
|                      | Total Criminal Arrests       | 2,324                         | 14,564                          | 21,055                          |

*Note: Felony DWI, intoxication manslaughter and other serious traffic offenses, as well as Illegal Alien detentions and referrals to U.S. Border Patrol are not included in the arrest statistics above.*

#### **Public Corruption Arrests in the Border Region**

|               | Last 60 days<br>(11/15-12/15) | Last 12 months<br>(01/15-12/15) | Operation total<br>(6/14-12/15) |
|---------------|-------------------------------|---------------------------------|---------------------------------|
| Texas Rangers | 23                            | 50                              | 75                              |

#### **DPS Marine Unit Operations**

|                              |       |
|------------------------------|-------|
| Last 60 days (11/15-12/15)   | 244   |
| Last 12 months (01/15-12/15) | 1,460 |
| Operation total (6/14-12/15) | 2,232 |

#### **DPS Aviation Operations**

|                                          |       |
|------------------------------------------|-------|
| Hours Flown Last 60 days (11/15-12/15)   | 897   |
| Hours Flown Last 12 months (01/15-12/15) | 5,583 |
| Hours Flown Operation total (6/14-12/15) | 8,735 |

#### **DPS Tactical Operations**

|                              |       |
|------------------------------|-------|
| Last 60 days (11/15-12/15)   | 337   |
| Last 12 months (01/15-12/15) | 1,553 |
| Operation total (6/14-12/15) | 2,325 |

**DPS Apprehension Support to U.S. Border Patrol**

|                                                             | Last 60 days<br>(11/15-12/15) | Last 12 months<br>(01/15-12/15) | Operation total<br>(6/14-12/15) |
|-------------------------------------------------------------|-------------------------------|---------------------------------|---------------------------------|
| <b>Illegal Alien Detections and Interdiction Assistance</b> |                               |                                 |                                 |
| Cameras                                                     | 14,435                        | 59,677                          | 81,007                          |
| Aviation                                                    | 374                           | 2,536                           | 4,108                           |
| Tactical Marine Unit                                        | 72                            | 425                             | 607                             |
| <b>Illegal Alien Detentions and Referrals</b>               |                               |                                 |                                 |
| Tactical Marine Unit                                        | 183                           | 1,312                           | 2,102                           |
| Texas Highway Patrol*                                       | 132                           | -                               | -                               |
| <b>Total Apprehension Support to U.S. Border Patrol</b>     | <b>15,796</b>                 | <b>63,950</b>                   | <b>87,824</b>                   |

\*DPS did not capture Texas Highway Patrol Illegal Alien Detections and Referrals prior to December 1, 2015 and is now being captured state-wide.

**Value of Drugs Seized by DPS in the Border Region\***

|                                     | DPS Only               |
|-------------------------------------|------------------------|
| Last 60 days (11/15-12/15)          | \$76,718,788           |
| Last 12 months (01/15-12/15)        | \$646,550,290          |
| <b>Operation total (6/14-12/15)</b> | <b>\$1,273,452,151</b> |

\*These totals do not include seizures where DPS provided direct support to another agency.

**Value of Drugs by Type by DPS in the Border Region \* (6/14 – Present)**

|                 | Marijuana              | Cocaine              | Methamphetamine     | Heroin              |
|-----------------|------------------------|----------------------|---------------------|---------------------|
| <b>DPS Only</b> | <b>\$1,039,599,748</b> | <b>\$141,637,416</b> | <b>\$69,446,452</b> | <b>\$22,768,535</b> |

\*These totals do not include seizures where DPS provided direct support to another agency.

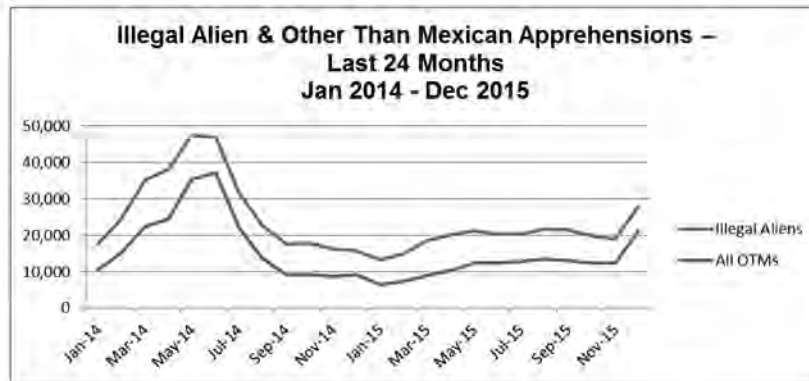
**Currency Seized by DPS in the Border Region\***

|                                     | DPS Only            |
|-------------------------------------|---------------------|
| Last 60 days (11/15-12/15)          | \$1,752,084         |
| Last 12 months (01/15-12/15)        | \$16,159,180        |
| <b>Operation total (6/14-12/15)</b> | <b>\$20,224,724</b> |

\*These totals do not include seizures where DPS provided direct support to another agency.

### **Smuggling Trends**

The Texas Legislature provides funding to centralize the collection and sharing of border incident data across all jurisdictions in the border region, which comprises local, state, and federal agencies across 53 counties and more than 171 separate law enforcement agencies in the border region.



#### **U.S. Border Patrol IA Apprehensions in the Border Region**

|                        |         |
|------------------------|---------|
| FY 2016 (10/15-12/15)* | 70,887  |
| FY 2015**              | 221,684 |
| FY 2014**              | 341,132 |

\*Unofficial U.S. Border Patrol statistics. \*\*CBP reconciled apprehensions. Data includes El Paso Sector, which comprises parts of TX and NM.

#### **U.S. Border Patrol Family Unit Apprehensions in the Border Region\***

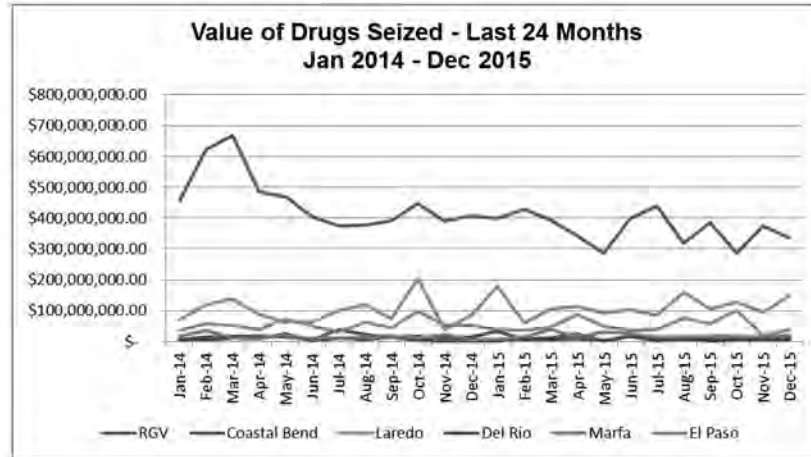
|                       |        |
|-----------------------|--------|
| FY 2016 (10/15-12/15) | 17,943 |
| FY 2015               | 32,949 |
| FY 2014               | 61,605 |

\*CBP reconciled apprehensions. Data includes El Paso Sector, which comprises parts of TX and NM.

**U.S. Border Patrol Unaccompanied Alien Children Apprehensions in  
the Border Region\***

|                       |        |
|-----------------------|--------|
| FY 2016 (10/15-12/15) | 13,680 |
| FY 2015               | 31,109 |
| FY 2014               | 58,312 |

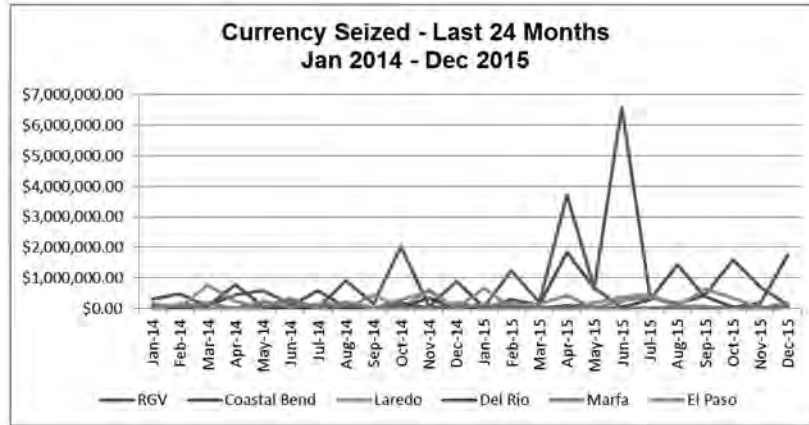
*\*CBP reconciled apprehensions. Data includes El Paso Sector, which comprises parts of TX and NM.*



**Value of Drugs Seized in the Border Region**

|                                     |                         |
|-------------------------------------|-------------------------|
| <b>Last 60 days (11/15-12/15)</b>   | <b>\$1,073,593,529</b>  |
| <b>Last 12 months (01/15-12/15)</b> | <b>\$6,840,501,067</b>  |
| <b>Operation total (6/14-12/15)</b> | <b>\$10,976,463,220</b> |

*Note: The above border region statistics represent local, state and federal seizures.*



#### Currency Seized in the Border Region

|                              |              |
|------------------------------|--------------|
| Last 60 days (11/15-12/15)   | \$3,132,990  |
| Last 12 months (01/15-12/15) | \$28,215,108 |
| Operation total (6/14-12/15) | \$37,232,652 |

*Note: The above border region statistics represent local, state and federal seizures.*

Mr. LABRADOR. Thank you. Ms. Vaughan?

**STATEMENT OF JESSICA M. VAUGHAN, DIRECTOR OF  
POLICY STUDIES, CENTER FOR IMMIGRATION STUDIES**

Ms. VAUGHAN. Thank you for the opportunity to testify this morning. The Obama administration's handling of the border surge has been a colossal disaster.

Mr. LABRADOR. Just a second, I think, Mr. McCraw, your microphone is still on.

Ms. VAUGHAN. In the face of this surge of illegal migration, the Administration has simply suspended enforcement of the law in favor of a charade of deportation proceedings that are routinely manipulated, ignored, and defied by the new arrivals and their advocates. The Administration and its allies, including the network of social and legal services contractors that receive hundreds of millions of dollars of public funding to process and advocate for more and more new arrivals, have tried to characterize this migration as a refugee crisis.

But according to what the migrants have told the Border Patrol journalists, and my own colleagues doing field research, most of the local migrants are not refugees displaced by war, nor fleeing persecution. Instead, they are driven north by the widely publicized Obama administration policies that they have heard will allow them to stay in the U.S. for an indefinite period of time. They understand that they will be able to join family members or friends and that they will be able to work, and that even if they skip out on immigration hearings, nothing will happen to them. And from Mr. Judd's testimony, it appears that the Administration is no longer going through even the pretense of enforcement for those who arrive illegally at the border these days.

This policy may make some people feel good, and certainly many contractors are earning a good living off this phenomenon, but the influx is imposing an enormous fiscal and public safety strain on some communities. Even worse, the Administration's see no evil approach has resulted in shockingly negligent Federal policies on the placement of unaccompanied minors.

As we have discussed, it was revealed last week by a Senate investigation that the Department of HHS and its multimillion-dollar network of contractors delivered an unknown number of kids right into the hands of traffickers, abusers, and other criminals. This occurred because HHS does not verify the identity or relationship claims made by sponsors who take custody of these kids or vet most of the adults who sponsor juveniles or other adults in the household. Even if they did a background check, criminal convictions would not disqualify a sponsor.

HHS and its contractors actually have no idea how many minors have been placed with felons or other criminals, or even where many of these kids are. HHS and its contractors sometimes do not even lay eyes on the people they are placing the kids with or the place they will be living.

Home studies were conducted in only 4 percent of the cases last year, or in the last 3 years.

While the social welfare contractors are making out very well, the communities where they placed these new arrivals are not

doing nearly so well. The outlays for schooling are enormous, on the order of \$500 to \$700 million a year nationally, which is paid by the local taxpayers. Local school systems cannot pull this money out of thin air, or depend on state assistance. They have to cut other things to pay for the new teachers, counselors, aides, and others to help support these kids.

The city of Lynn, Massachusetts near me had to come up with an additional \$8 million last year to cover school expenses for the unaccompanied juveniles. And in another town near where I live, it was half a million dollars in 1 year for about 20 new illegal arrivals. I realize the sum is a drop in the bucket for some of the multimillion-dollar contractors, but it is a lot of money for local taxpayers, and health services are also an expense. All of these are essentially an unfunded mandate of the President's policies that fall onto local and state governments who have no say in the process or the policy.

And finally, I want to touch on one problem that has reappeared and worsened apparently as a result of these open door policies. Violent transnational gangs such as MS-13, which are based in Central America, have taken full advantage of the Obama administration's careless catch and release policies in order to swell their ranks here and also to recruit and smuggle in new members. This has contributed to a spike of new violence here as they try to expand their territory and as volatile new recruits try to prove their mettle by committing brutal acts.

One of the places where this is happening is Frederick County, Maryland, just north of Montgomery County. Gang violence and fighting is now rampant in two of the county high schools: MS-13 has one floor; 18th Street has another. Just in the last several weeks, six juveniles who came as unaccompanied juveniles have been arrested and jailed for violent crimes, including attempted murder, assault, armed robbery, weapons charges, and unprovoked vicious attack on a deputy and more. All are documented MS-13 members. Gang investigators believe that they were recruited from El Salvador by two older illegal alien MS-13 shot callers who have been residing in the area for a longer time. One of these older gang members was approved for the President's Deferred Action for Childhood Arrivals. And one was employed as a custodian in a middle school.

There are similar stories out of Boston. At least three murders attributed to unaccompanied minors just in September near where I live. Virginia has problems, Long Island, and even here in Washington, D.C. The answer is not just to get used to this surge in illegal immigration as a new normal, but to reverse the controversial policies and interpretations of the law that end up rewarding the illegal crossers and the traffickers and smugglers.

[The prepared statement of Ms. Vaughan follows:]

**Another Surge of Illegal Immigrants Along the Southwest Border:  
Is This the Obama Administration's New Normal?**

**U.S. House Judiciary Committee  
Subcommittee on Immigration and Border Security**

**February 4, 2016**

**Statement of Jessica M. Vaughan  
Center for Immigration Studies**

Thank you, Chairman Gowdy and Ranking Member Lofgren, for the opportunity to testify on the problems created by the continuing illegal surge across the southwest border of families and minors. The Obama administration's handling of this phenomenon has been a colossal disaster. Instead of following the existing mass migration response plan, the administration has simply suspended enforcement of the law in favor of a charade of "immigration proceedings" that are routinely manipulated, ignored and defied by the new arrivals and their advocates. As a result, American communities have had to absorb about 240,000 new illegal immigrants from Central America since 2012, straining budgets and overwhelming school systems and welfare agencies. Even worse, the administration's "see no evil" approach to this problem resulted in shockingly negligent policies on the placement of unaccompanied minors, and delivered an unknown number of kids into the hands of traffickers, abusers, and other criminals. Violent transnational gangs such as MS-13 have taken full advantage of the Obama administration's welcome mat to swell their ranks here, contributing to a noticeable spike in gang violence in certain localities – with tragic results. The answer is not to just get used to this surge in illegal immigration as a "new normal," as one Obama official suggested, but to reverse the controversial policies and interpretations of the law that end up rewarding the illegal crossers.

**New Arrivals Spike in 2016.** According to Border Patrol statistics,<sup>1</sup> since 2012 agents have apprehended 125,306 Central American unaccompanied minors (UACs). Since 2013, agents have taken 112,237 Central American family units into custody. Together, these add up to 237,543 new illegal arrivals from Central America over the southern land border. Roughly half of these arrived in FY2014. Nearly all were released into the country under the Obama administration's controversial interpretation of sections of the immigration law that are intended to protect victims of trafficking and persecution.<sup>2</sup> After slowing down in 2015, the number of new family and minor arrivals has ticked upward in recent months, with 21,469 new family members and 17,370 new minors arriving during the first three months of FY2016. The number of illegal minor arrivals has increased 117% over last year, and the number of new illegal family arrivals has increased 187% over last year.

In addition, there is a large new flow of illegal Cuban migrants into Texas. That influx will start growing this week, when plane loads of hundreds of Cubans who traveled first to Costa Rica will be flown to El Salvador, bussed north to Mexico and then make their way to the U.S. border to seek permanent residency, as per an agreement brokered by diplomats in the region. So far, there are 8,000 Cubans who will arrive via this route.<sup>3</sup> We can expect that the Obama administration will choose to admit these illegal arrivals under its parole authority, even though there is no legal reason to do so.<sup>4</sup>

For years, criminal smuggling organizations have been bringing in people from other countries to take advantage of the administration's policy of releasing anyone who claims a fear of return home.<sup>5</sup>

**Migrants Are Motivated By Expectation That They Can Stay in the United States.** While some have characterized the surge of new illegal arrivals from Central America as a "refugee flow" or "humanitarian crisis," in fact most of the migrants say that their primary reason for coming is because they expect that they will be allowed to stay.

According to information released by this committee based on interviews of recent illegal family arrivals that were conducted by border agents,<sup>6</sup> nearly 70 percent of the migrants said that they heard that they would be

<sup>1</sup> <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children/fy-2016>.

<sup>2</sup> Jon Feere, "2008 Trafficking Law Largely Inapplicable to Current Border Crisis," Center for Immigration Studies, July 2014, <http://cis.org/2008-trafficking-law-inapplicable-current-border-crisis>.

<sup>3</sup> Kausha Luna, "Central America and Mexico Agree to Continue to Transfer Cubans to the U.S.," Center for Immigration Studies, January 26, 2016, <http://cis.org/luna/central-america-and-mexico-agree-continue-transfer-cubans-us>.

<sup>4</sup> Dan Cadman, "Don't Reward Illegal Cuban Arrivals With the Benefit of Adjustment," Center for Immigration Studies, January 4, 2016, <http://cis.org/cadman/refusing-reward-illegal-cuban-arrivals-benefit-adjustment>.

<sup>5</sup> Daniel Gonzalez, "Arizona sees surge of asylum seekers from India," Arizona Republic, September 8, 2013, <http://www.usatoday.com/story/news/nation/2013/09/08/ariz-sees-surge-of-asylum-seekers-from-india/2781025/>.

released and/or receive an immigration benefit when they got here. In addition, nearly 60 percent said that U.S. immigration policies influenced their decision to come.

**Federal Authorities Lose Track of Most New Arrivals.** No single government agency is in charge of keeping track of the new arrivals; this responsibility is shared by Health and Human Services (HHS), the Department of Homeland Security, (DHS), and the immigration courts, which are part of the Department of Justice. Family arrivals typically are released to live on their own. Most minors are turned over to their parents (who paid smuggling rings to bring them), but some are released to the custody of another relative or unrelated sponsor; still others are placed in foster care or a group home run by a government contractor.

A scathing report released this week by the Senate Permanent Subcommittee on Investigations revealed a litany of serious defects in HHS policies for placing newly arrived minors.<sup>7</sup> These policy shortcomings have drastically compromised the agency's ability to protect the minors or to detect human trafficking, debt labor, and other abusive situations. The main focus of the Senate investigation was a case in which a group of farm labor contractors ran a smuggling ring for Guatemalan minors who were then put to work in harsh conditions at an Ohio egg farm. Among the shocking findings revealed in the report and at the oversight hearing:

- HHS does not verify the identity or relationship claims made by individuals who volunteer to sponsor UACs. The agency has placed minors with traffickers and other "sponsors for hire."
- HHS failed to detect when sponsors obtained custody of multiple unrelated children, or when multiple minors were sent to the same address.
- The background check process for sponsors is woefully inadequate. Most adults who sponsor minors are not vetted at all, nor are other adults who live in the household or who are designated as back-up sponsors. This policy was tightened slightly just over a week ago, which is more than six months after the egg farm trafficking case had made the news.
- Even if the agency did a background check, the HHS policy is that sponsors are not disqualified due to criminal convictions, no matter how serious. HHS has no idea how many minors have been placed with felons or other criminals.
- HHS does not require pre-placement home studies, as is standard practice in other foster care placements. Home studies were conducted in only four percent of cases in the last three years.
- HHS makes no effort to determine if a sponsor has adequate income to support the minor.
- Once a child is released to a sponsor, HHS allows sponsors to refuse post-release services for the child, and to refuse HHS contact with the minor to follow up or check on their welfare.
- In tens of thousands of placements, including many horrifically inappropriate placements, HHS has never terminated a sponsorship agreement.

Investigators uncovered documents showing that senior HHS officials knew and discussed that the screening procedures for sponsors were inadequate, but failed to implement improvements. Even today, the vast majority of placements are made without verifying the identity of sponsors, criminal histories, or incomes. For example, reportedly, the people claiming to be parents or other family members are not required to prove the relationship with verifiable documents. Essentially, the placements of minors are done through the honor system.

<sup>6</sup> U.S. House Judiciary Committee, "Goodlatte Statement on Administration's Policies Endangering Unaccompanied Minors," January 25, 2016.

<sup>7</sup> U.S. Senate Permanent Subcommittee on Investigations, Committee on Homeland Security and Governmental Affairs, "Protecting Unaccompanied Alien Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement," Staff Report, January, 2015, <http://www.hsgac.senate.gov/subcommittees/investigations/hearings/adequacy-of-the-department-of-health-and-human-services-efforts-to-protect-unaccompanied-alien-children-from-human-trafficking>.

Senators at the hearing noted that the screening deficiencies were not the result of a lack of resources. The agency has maintained a surplus of \$350 million in unspent funds over the last two years.

According to news media accounts, some newly arrived illegal minors have run away from the temporary shelters or group homes. In October, 2015 four Honduran teenagers escaped from a shelter in Tucson, leading local officials to complain about the lack of transparency and oversight. Last year, two Guatemalan teenagers fled a shelter in Illinois and committed a carjacking in California that led to their re-capture.

Now that arrivals have spiked again to crisis proportions, the administration is considering placing the unaccompanied minors on active duty military bases. This plan is absurd, especially given the administration's record of mismanagement and negligence. Placing hundreds of minors, some unknown number of whom are almost certainly violent gang members, in the midst of secure, active duty military bases, living among military families, is not a solution and should be blocked by Congress.

On October 1, 2015, the Office of Refugee Resettlement began having contractors try to telephone the minors they had placed in order to determine how they are faring. But the resettlement contractors who work with ORR on post-placement services are skeptical that many will be reached. One staffer from Lutheran Immigration and Refugee Service (LIRS) has noted that, in her organization's experience, the teenagers will not be interested in further contact, and that many are not living with their original sponsor anyway, even if it was a parent, due to "family breakdown".

The LIRS representative also said that only 35 percent of the minors have bothered to attend their legal orientation program. This suggests that few have been truly interested in seeking legal status and understand that they can get along fine without it. New statistics from the immigration courts show that about half (48 percent) of the UACs have skipped out on their hearings, as detailed in the table below. In total, 60 percent of those whose cases are completed have been ordered deported, but only a small number have actually been deported, probably fewer than 4,000 (the exact figure has never been disclosed and may not be known).

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**Outcome of UAC Immigration Proceedings: October 1, 2013 - August 31, 2015**

|                                   |        |
|-----------------------------------|--------|
| Total Cases Filed                 | 84,820 |
| Cases Completed                   | 29,307 |
| <i>Ordered Removed</i>            |        |
| <i>in Person</i>                  | 3,360  |
| <i>in Absentia</i>                | 14,024 |
| <i>Permitted to Stay</i>          |        |
| <i>Granted Status</i>             | 313    |
| <i>Admin. Closed/ Terminated*</i> | 11,610 |
| Cases Still Pending               | 55,513 |

*\* These are primarily cases in which the UAC has applied for or has been approved for asylum or Special Immigrant Juvenile Status. It has been reported that approximately two-thirds have applied for asylum and one-third have applied for SIJS.*

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**Most Family Arrivals Skip Hearings, Ignore Removal Orders.** Immigration court statistics show that very few of the illegal family arrivals are cooperating with the generous due process that they have been allowed. Only a small number are qualifying for asylum. Most concerning, it is now clear that very few of the illegal arrivals will ever be repatriated, even if they fail in their request for asylum or other status, and that the administration's repeated assurances that they would be sent back were insincere.

Court records indicate that fewer than 10 percent of the family units were ever detained, and none of the minors are. According to a report of cases filed over an 11-month period in 2014-15, 84 percent of the aliens failed to appear for their immigration court hearings. Immigration judges found that only two percent of the family applicants whose cases were completed had qualified for relief. Ninety-two percent of those who have completed their hearings have been ordered removed.<sup>8</sup> Most of these removal orders are not being enforced; out of the thousands of people who have been issued final orders of removal, only 77 have been removed so far. Most are still living here in defiance of those orders.

**Policy of Resettlement Costly for Local Communities.** Because the Obama administration has declined to use accelerated forms of due process and instead chosen to allow most new arrivals to stay to await or abscond from leisurely-paced immigration hearings, these illegal aliens are here to stay for an extended period of time, and the local communities in which they settle are greatly affected. Typically these are places that already have established Central American communities. Often these communities are already struggling with high unemployment, scarce funding for schools, and other fiscal difficulties, not to mention an existing population that needs health and welfare services.

The top states of resettlement are California (mainly Los Angeles County), Florida (mainly Miami-Dade County), Maryland (mainly the DC suburbs), New York (mainly Long Island), Texas (mainly the Houston area) and Virginia (mainly Fairfax and neighboring counties).

**Education is the Most Significant Cost.** School districts around the country have had to scramble to make room for this unprecedented new influx of young Central Americans who had arrived illegally as part of the surge, either as UACs or as part of family units. The problem is not just the numbers, but also that typically many of the new arrivals have had only a few years of schooling in their home country, have not learned to read nor acquired other basic skills fundamental to education beyond elementary school, or speak an indigenous language (not Spanish). These kids are more likely to require individualized educational plans and tutoring support due to emotional trauma, learning disabilities, or other special needs.

One Massachusetts school committee chair told me that the surge arrivals have been a "shock to the system" because there were so many who came at once, and because most were older than the typical new immigrant children, who are more likely to enter elementary or middle school, not high school.

Massachusetts has had to assemble a state-wide working group of educators to design a new curriculum, known as the Students With Limited or Interrupted Formal Education (SLIFE) program, especially for the UAC arrivals, who numbered 1,400 in 2014. Some districts have had to create unique "newcomers" educational programs. However, the districts must be careful not to run afoul of federal oversight on "mainstreaming" special needs children. The city of Lynn, Massachusetts was threatened with litigation by the U.S. Department of Justice when it attempted to launch a night school program designed to better meet the needs and interests of the large percentage of male UAC arrivals who wanted to drop out and work rather than attend a traditional day school program.

<sup>8</sup> Jessica Vaughan, "Here to Stay," Center for Immigration Studies, June 26, 2015, <http://cis.org/vaughan/here-stay>.

Everyone agrees that these students need support to succeed, but the problem is how to pay for it, and how to anticipate the flows so that plans can be made. Says Lynn, Mass. Mayor Judy Kennedy: "We have gotten enough new students to build a school, but unfortunately we don't have the money to build a school." In the 2013-14 school year, Lynn received about 250 new students from Guatemala and Honduras. Of these, 129 were assigned to the 9<sup>th</sup> grade.

Last year, as a result of the influx, the city of Lynn had to find an additional \$8 million to cover increased school expenditures (without a corresponding increase in tax revenue to cover it). As a result, the city had to cut other agency budgets by two percent across the board. City staff salaries were frozen; the community policing program was ended; an order for a new hook-and-ladder fire truck was cancelled, among other belt-tightening measures.

This story has been repeated all over the country. At a parent-teacher association meeting in Loudoun County, Virginia this past November, it was announced that due to the influx of unaccompanied minors, the school's counseling resources were severely stretched, and that all of the year's resources for parent liaison services were used up by September.

Louisiana's Jefferson Parish, which received more than 500 UACs, said it needed to hire 27 new ESL teachers, 20 new ESL para-educators, 19 regular teachers, and three special education teachers to accommodate the influx. The total cost was estimated to be \$4.8 million, split between the state and the parish. The state was not expecting any additional support from the federal government for the Limited English Proficiency students, because most of them arrived at the last minute.<sup>9</sup>

New arrivals that occur late in the calendar year, such as the 17,000 who arrived in the last three months of 2015, are especially problematic, because the schools typically get no extra funding from their state governments after a certain point: "If they come after Sept. 30 and enroll in school, we still have to serve them but we get no funding," said one rural Delaware school administrator. This high school absorbed about 70 new arrivals in one year, costing more than \$500,000, not including special education costs.<sup>10</sup>

Other states report the following outlays per UAC student:

- Texas -- \$9,500 (source: Texas Legislative Budget Board)
- Florida -- \$8,900 per child + \$1,900 per UAC for special needs (source: Florida Department of Education) for a total cost of \$30-40 million per year.
- Fairfax County, Virginia -- \$14,755 per English Language Learner, for a total estimated cost per year for UACs of \$14 million. (source: Fairfax County Supervisor).
- National Average: \$11,153 to 12,608 (source: National Center on Educational Statistics).
- Total Cost Nationwide: \$580 million to \$670 million for the FY2014 UAC cohort per year (not counting children who arrived as part of family units).

**Health Care Costs.** Less has been reported on the health care costs for UACs, but inevitably they will present a major burden for state and local governments. "I think the biggest issue for us is the big handoff to local governments in terms of service costs and wraparound for these families and children. There's no getting around that," said Uma Ahluwalia, director of the Montgomery County, Maryland, Department of Health and Human

<sup>9</sup> Julia O'Donoghue, "Unaccompanied immigrant children will cost \$4.8 million to educate in Jefferson Parish," *New Orleans Times Picayune*, September 15, 2014,

[http://www.nola.com/politics/index.ssf/2014/09/unaccompanied\\_immigrant\\_childr.html](http://www.nola.com/politics/index.ssf/2014/09/unaccompanied_immigrant_childr.html).

<sup>10</sup> Glenn Rolf, "Flood of unaccompanied minors translates to major impact," *Sussex Post*, July 25, 2014, <http://delaware.newspg.com/southerndelaware/133817-70/flood-of-unaccompanied-minors-translates-to-major-impact>.

Services. “In the meantime, the children are going to be attending local schools, they’re going to have health and mental health needs . . . I think it will definitely strain our capacities.”<sup>11</sup>

The Washington, DC-based Mary’s Center, which provides health services to DC-area immigrants, reported costs of \$400,000 for services for UACs in 2014. The services to UACs cost more than double what routine services cost for most immigrants, because many of the newly arrived Central American youths had been injured or sexually molested on the journey.<sup>12</sup>

One big ticket item in Lynn, Mass. was the cost of immunizations for the UAC arrivals, which had to be done before the kids could be admitted to school. In Massachusetts, there is a delay of one or two months before the students can be enrolled in the state health insurance program for the needy, so the city had to set up special clinics and hire extra nurses on its own dime in order to get the kids into school promptly. (Of course taxpayers pay for the students’ health care, regardless of whether the local or the state agency is covering the costs.)

Mental health care for these individuals may be a long-term challenge. According to numerous studies, UACs are more likely to need counseling and other forms of care as a result of physical or emotional trauma suffered in their home countries, on the journey with smugglers, or after arrival in the United States. According to one report:

Unaccompanied alien children’s migration likely compounds significant levels of preflight trauma. The 2000-plus-mile journey to the United States traces routes controlled by drug cartels who beat, drown, drug, maim, murder, rob, molest, and starve undocumented migrants, with some UAC targeted for forced recruitment. Likewise, *coyotes* (guides [actually smugglers]) may offer UAC drugs or alcohol to stem their hunger or proposition them for hard labor or sex in return for survival. Combined, the high level of potential trauma before and during migration may lead to some of the highest levels of mental illness among children in the United States.<sup>13</sup>

Typically this care will need to be provided through publicly-funded state, local or federal social service programs for children rather than private insurance, since most of the family members who are assuming custody of the youths are also in the country illegally and thus more likely to lack insurance (and are not required to carry it under federal rules).

**Public Safety Problems.** The administration’s careless “catch and release” policies have been exploited by ordinary Central Americans seeking opportunity and family members joining prior illegal arrivals, but also by transnational criminal organizations seeking to expand their numbers, their illegal activity, and their dominance in the criminal world. Established gangs have been able to transfer an unknown number of experienced foot soldiers from Central America to help colonize new criminal territory in the United States. And, the tide of new young people, many of whom have already been exposed or involved in street gangs at home, has provided a huge pool of new recruits for the gangs here. Gangs such as MS-13 and 18<sup>th</sup> Street are enjoying a brutal revival in certain parts of the country and are establishing themselves in new places.

This is taking a toll on the quality of life in certain communities. Since absorbing about 265 illegal unaccompanied Central American minors since 2014, Frederick County, Maryland has experienced a significant

<sup>11</sup> Quoted in the International City/County Management Association newsletter, August 15, 2014:

[http://icma.org/en/Article/104850/Preparing\\_for\\_Costs\\_of\\_Unaccompanied\\_Children\\_Influx?pub=108&issue=8.19.2014](http://icma.org/en/Article/104850/Preparing_for_Costs_of_Unaccompanied_Children_Influx?pub=108&issue=8.19.2014).

<sup>12</sup> Tina Reed, “This is what it’s costing one DC health center to treat ‘influx of ‘unaccompanied minors’ from Central America,” *Washington Business Journal*, August 15, 2014; <http://www.bizjournals.com/washington/blog/2014/08/this-is-how-much-it-s-costing-one-d-c-health.html>.

<sup>13</sup> Elizabeth G. Kennedy, “Unnecessary Suffering: Potential Unmet Mental Health Needs of Unaccompanied Alien Children,” *JAMA Pediatrics*, April 2013: <http://archpedi.jamanetwork.com/article.aspx?articleid=1569275>.

uptick in violent, gang-related crime. School resource officers at the two public high schools that most of the new arrivals attend report that gang fights occur several times a week, as gang members cross into each other's territory within the school building. In just the last several weeks, six teenagers who arrived within the last couple of years as unaccompanied minors have been arrested and jailed for violent crimes, including attempted murder, assault, armed robbery, weapons charges, an unprovoked vicious assault on a deputy, and more. All are documented MS-13 members. Gang investigators believe that they were recruited from El Salvador by two older illegal alien MS-13 shot callers who have been residing in the area for a longer period of time. One of these older gang members was approved for the President Obama's Deferred Action for Childhood Arrivals (DACA). One was employed as a custodian in a middle school.

Just last week, federal and local law enforcement agencies in the Boston area conducted a sweep to take three dozen MS-13 gang members off the streets. In all, 56 gang members were indicted on racketeering, murder, drug trafficking, weapons, document fraud, and other charges. Reportedly several of the gang members and/or associates had originally arrived as unaccompanied minors. MS-13 gang members are believed to be responsible for the murder of at least three teenagers aged fifteen and sixteen in East Boston since September. The younger aspiring gang members who have been charged with the murders were allegedly completing a kind of initiation rite, trying to prove themselves worthy of full membership. Another teen gang member, Osmin Antonio Murcia, a citizen of El Salvador who arrived as an unaccompanied minor in 2014, now a high school drop-out and MS-13 member, is currently in custody after arrest for the armed assault with intent to murder of an Everett teen on Halloween. He slashed the victim wide open after a random encounter on the street. The police report says he was suspected of other stabbings at the high school before he dropped out.

Several murders in the Washington, DC area have been attributed to MS-13 gang members, including Honduran citizen Rigoberto Gutierrez Cruz, whose body was found in Rock Creek Park, and who reportedly was targeted because he had dared to report an earlier assault to authorities. The FBI Special Agent in Charge of the Washington, DC field office has said, "We've seen a reemergence or reconstitution of MS-13 over the last year and a half. With that has come an increase in violence... They are being more organized in what they do, how they do it and what they do it for."<sup>14</sup>

Three unaccompanied minors who arrived in Loudoun County, Virginia in 2013 have been indicted for the gang-related murder of 17-year-old Danny Centeno Miranda, also an unaccompanied minor living with his uncle. Miranda was killed while walking near his school bus stop one morning. Two of the suspects are citizens of El Salvador and believed to be involved with MS-13, and the shooter, a juvenile, is a citizen of Mexico. Reportedly, all three suspects skipped out on their August 2015 immigration court hearings.

**Released UACs Shield Family Members From Deportation.** Under current DHS policies, those illegal aliens who have a family member with some kind of lawful or quasi-lawful status – such as a UAC who is “in proceedings” – are considered off-limits for enforcement, even if they may have criminal infractions or multiple prior deportations. This policy, together with the administration's decision to release all minors (and those who claim to be minors) regardless of whether they truly meet the legal standards for special due process protections as UACs, creates a huge incentive for Central American illegal aliens who have children in their home countries to pay smugglers to bring them to the United States.

The case of Moises Herrera, an illegal alien from El Salvador, illustrates how this plays out. Herrera crossed illegally in 2005 and was caught by the Border Patrol and released pending an immigration court hearing. He failed to appear at his hearing because he feared deportation and settled in Everett, Massachusetts, working as a house painter and in a bakery. Herrera left behind a stepson and two daughters and eventually married again here. He was jailed and deported after a traffic stop in 2011 (driving without a license is a criminal offense in

<sup>14</sup> Michael La Sosa, “Salvador Gang MS-13 Increasing in U.S.,” *Insight Crime*, November 201, 2015, <http://www.insightcrime.org/news-briefs/salvador-gang-ms13-increasing-activity-in-us>.

Mass.), returned illegally, and was arrested again in October 2014 for running a stoplight, unlicensed driving, and providing a false identity to police. These charges were dismissed, but he was arrested by ICE. ICE apparently declined to prosecute him for the felony charge of illegal re-entry after deportation, but was pursuing deportation since he is an egregious immigration violator. But Herrera was released and has received a one-year stay of deportation, in part because his 17-year-old daughter arrived illegally over the summer as part of the surge of UACs. As mentioned above, sponsors of UACs are allowed to remain in the United States, supposedly to ensure that the UAC will comply with deportation proceedings. Herrera also has a new-born U.S. citizen child, which may enable him to qualify for the recently announced executive deferred action amnesty.

There can be no question that the President's plan to allow millions of illegal aliens to receive work permits and to allow millions more to be exempt from enforcement will inspire more illegal immigration to American communities already burdened from prior influxes.

**Conclusion.** The most effective way to alleviate the strain on communities caused by the influx of new illegal arrivals is for Congress to force a change in policy. One step could be to clarify in the statute that only those juveniles who are victims of exploitative human trafficking and who are without family members in the United States should receive special due process protections. Those illegal alien minors who were smuggled or transported into the United States illegally in order to be reunited with illegally-resident family members, and who lack a legitimate claim for relief, should be prioritized for deportation along with their family members. In addition, the family members who contracted with criminal smuggling organizations should be held accountable for that criminal offense and removed from the United States if amenable. Rather than releasing new illegal arrivals into the country to take advantage of a dysfunctional immigration court system, DHS should implement a policy that more closely resembles its existing mass migration plan, and that sets out how to keep these arrivals in custody near the border so that those who do not qualify for admission can be promptly repatriated. Regarding those minors who are deemed eligible for protection as victims of trafficking, the agencies must implement tighter vetting of sponsors and more effective tracking of the minors' welfare. Congress should not allow the Obama administration to incentivize illegal immigration and human smuggling by rewarding those who participate – especially when this act involves children.

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Mr. LABRADOR. Thank you very much. Ms. Young?

**STATEMENT OF WENDY YOUNG, PRESIDENT,  
KIDS IN NEED OF DEFENSE (KIND)**

Ms. YOUNG. On behalf of KIND, thank you, Mr. Chairman, and Members of the Subcommittee for the opportunity to appear before you to share our views on the surge of Central Americans to the U.S.

KIND was founded to ensure that unaccompanied immigrant and refugee children are provided protection through pro bono legal representation, assistance to children returning to their countries of origin, and guidance to children applying for resettlement to the U.S. We have assisted more than 8,500 children and trained 11,000 volunteer attorneys in our 7 years of operation. This work gives us a comprehensive understanding of the urgent protection needs of children on the move throughout the region.

KIND is deeply concerned about the increasing emphasis on a law enforcement approach toward addressing the surge on unaccompanied refugee children and families from Central America that jeopardizes the protection of vulnerable individuals from the rampant violence that characterizes their home countries.

While the recently announced U.S. resettlement program is a step in the right direction, it is a limited response that must be accompanied by full and fair access to the U.S. asylum system for those Central American families and children who reach our borders seeking safety. It must be underscored that it is not illegal to seek asylum in the U.S.

El Salvador, Honduras, and Guatemala rank among the top six countries with the highest murder rates in the world. Sadly, children have been specifically targeted by the gangs and criminal rings that terrorize large parts of the Northern Triangle. The gangs attempt to forcibly recruit children, especially those in their early teens, but sometimes as young as kindergarten age. Girls are forced to become girlfriends of gang members, which in fact are nonconsensual relationships that result in rape by gang members. Children effectively have no one to turn to protect them due to the weak governance and corruption that characterizes the region.

According to the UN Refugee Agency, at least 58 percent of children arriving at the U.S. border have been forcibly displaced and are potentially in need of international protection. Moreover, the U.S. is not the only country receiving asylum seekers. UNHCR has documented an over 1,000 percent increase in asylum applications from the Northern Triangle filed in Belize, Costa Rica, Mexico, Nicaragua, and Panama.

In the absence of serious efforts to control this violence and provide meaningful opportunities for children to remain home safely and sustainably actions to deter unaccompanied children and families from coming to the U.S. will not work. Raids on families in addition to being ineffective are egregiously harmful to communities, particularly children.

The threat of deportation will not stop people from coming when their lives and those of their families are at stake. While the numbers of children coming alone dropped in January, it is not at all clear that the raids prompted this decline. A child referred to

KIND explained to us that he faced the difficult choice to flee or die. We have heard this sentiment repeatedly among the thousands of children with whom we work. Approximately half of these children do not have attorneys to help them make their case for U.S. protection. It is fundamentally unfair for any child to face removal proceedings without legal representation. Our staff has witnessed children as young as 3 years old appear in court without an attorney. This contradicts U.S. principle of due process and the values upon which this great Nation has been built.

Some proposals before Congress, including the Child Protection Act, would in fact undermine the protection of unaccompanied children by subjecting them to cursory border screenings, prolonging their detention with CBP, and fast tracking the adjudication of their asylum claims. In a similar fashion, the Asylum Reform and Border Protection Act, would roll back critical protections for children under the Trafficking Victims Protection Reauthorization Act, expand the inappropriate use of immigration detention for children, limit access to due process and protections available to children under both asylum and the special immigrant juvenile status program, and fail to provide for the safe and sustainable repatriation of children.

A robust asylum process that ensures due process and fundamental fairness is the most critical component in addressing a refugee crisis. Resettlement programs can be used strategically to support this response, but must not be viewed as a substitute for U.S. asylum obligations.

In closing, Congress has a critical role in the response to the increased number of unaccompanied children seeking protection in the U.S. Strong oversight of and provision of resources to the agencies charged with the care of unaccompanied children is essential to ensure that these children are housed in safe facilities and conditions while they are in Federal custody. Children's immigration proceedings must be fully and fairly adjudicated. And children must be represented by pro bono counsel when they cannot afford counsel themselves. Congress should ensure that children are safely and quickly released to their families during the pendency of their immigration proceedings, utilizing procedures that ensure that such releases are in the best interests of the child and protect their safety and well being.

Ultimately, the solution to the Central American refugee crisis lies in addressing the root causes of the flow. We must remain steadfast in our commitment to protecting vulnerable refugees. And remember that unaccompanied children are children first and foremost. KIND looks forward to working with Congress to improve the responses of our immigration asylum and refugee systems to the protection of unaccompanied children. Thank you again for the opportunity to appear before you.

[The prepared statement of Ms. Young follows:]

**Statement for Hearing  
On  
“Another Surge of Illegal Immigrants Along the Southwest Border: Is this the Obama  
Administration’s New Normal?”**

**House Judiciary Committee  
Subcommittee on Immigration and Border Security**

**February 4, 2016**

**By Wendy Young, President, Kids in Need of Defense**

**Introduction**

I appreciate the opportunity to testify on behalf of Kids in Need of Defense (KIND) and to submit our views on the continuing surge of Central Americans to the United States for this hearing. KIND was founded by the Microsoft Corporation and UNHCR Special Envoy Angelina Jolie in 2008 to ensure that unaccompanied immigrant and refugee children are provided pro bono legal representation in their immigration proceedings. KIND has assisted more than 9,100 children and trained over 11,000 volunteer attorneys in our seven years of operation.

We also promote greater protection of unaccompanied children in the Northern Triangle of Central America and Mexico through assistance to children returning to their countries of origin, the provision of guidance to children applying for resettlement to the U.S., and evaluation of the prevalence and response to sexual and gender based violence against child migrants, particularly girls. This work gives us a comprehensive understanding of the urgent protection needs of children on the move throughout the region.

KIND is deeply concerned about proposals from Congress that would address the surge in refugee children and families from Central America arriving at the U.S. border through a law enforcement lens that fails to acknowledge the need to protect vulnerable individuals from rampant and targeted violence in their countries. While the recently announced U.S. refugee resettlement program is a step in the right direction, this limited response must be accompanied by full and fair access to the U.S. asylum system and complementary forms of protection for those Central American families and children who reach our border seeking safety.

The significant increase in the number of unaccompanied children coming to the U.S. in recent months is a clear indication that the root causes of their flight remain unresolved and that violence in Central America remains a persistent problem. It also underscores that the nature of the outflow of Salvadoran, Honduran, and Guatemalan families and children is fundamentally a

refugee movement. Attempting to address it as an issue of border security will fundamentally lead to ineffective policies that neither curb the migration flow nor provide the necessary protection to those who need it. The act of coming to the U.S. and applying for asylum is not illegal under our immigration laws.

### **Background**

Congress has long recognized the unique vulnerability of unaccompanied immigrant and refugee children. The Homeland Security Act of 2002 (HSA) transferred the custody of unaccompanied children from legacy Immigration and Naturalization Service to the Department of Health and Human Services/Office of Refugee Resettlement (ORR) to ensure that children who arrive in the U.S. without a parent or legal guardian are provided appropriate care during the pendency of their immigration proceedings.<sup>1</sup> The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 built upon the HSA by mandating comprehensive services to unaccompanied children including the provision of pro bono legal representation to the maximum extent practicable.<sup>2</sup>

Since enactment of these two pivotal pieces of legislation, numerous steps have been taken by the range of federal agencies that have jurisdiction over unaccompanied children to address their rights as children and to improve their treatment. These include, among others:

- The expansion by ORR of shelter care facilities and foster care to house unaccompanied children in more child appropriate settings
- Issuance of guidelines by U.S. Citizenship and Immigration Services (USCIS) for the adjudication of children's asylum claims to acknowledge the challenges that children face when required to navigate the complexities of U.S. asylum law and articulate a basis for protection from persecution
- Implementation of juvenile dockets by the Department of Justice to provide more child-appropriate settings and procedures when children appear in immigration court
- Government support for the provision of pro bono legal representation to unaccompanied children
- Appointment of child advocates to address the best interests of unaccompanied children

<sup>1</sup> Homeland Security Act of 2002, P.L. 107-296, Sec. 462, [https://www.dhs.gov/xlibrary/assets/hr\\_5005\\_enr.pdf](https://www.dhs.gov/xlibrary/assets/hr_5005_enr.pdf)

<sup>2</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, P.L. 110-457, Sec. 235(c)5 <https://www.gpo.gov/fdsys/pkg/PLAW-110publ457/pdf/PLAW-110publ457.pdf>

- More systematic training of asylum officers, immigration judges, and border patrol officers in the unique needs of unaccompanied children and how best to address them.

These steps, among many others, have constituted the building blocks toward creation of a child-oriented system that balances protection at its core with the need to determine whether a child is eligible for relief under U.S. immigration and asylum law or can be safely returned to their country of origin. It is the result of strategic policy reforms that have developed over time through interagency cooperation and consultation with civil society.

There is no doubt that the system remains imperfect. The Central American child migration crisis that exploded in spring 2014 underscored some critical weaknesses in the system that jeopardized the safety of children, including the failure to adequately ensure in some cases that children are released to sponsors who will protect the child's safety and well-being. KIND believes strongly that we must learn from this experience and implement further reforms that close these protection gaps while resisting efforts that emphasize law enforcement and deterrence of further migration.

#### **Central American Crisis**

Unaccompanied children, who range in age from toddlers to teenagers, are uniquely vulnerable, having traveled hundreds or thousands of miles without a parent or legal guardian, risking a life-threatening journey to a country they do not know. Many of the children who have been arriving from the Northern Triangle of Central America in recent years are fleeing organized criminal violence caused by gangs and drug cartels that the governments of the countries of origin—El Salvador, Honduras, and Guatemala—are unable to control. The murder rates in these countries mirror those in conflict zones. In fact, El Salvador's homicide rate is one of the highest in the world and now surpasses that experienced during the height of its civil war; Honduras and Guatemala are close behind.<sup>3</sup>

Sadly, children have been specifically targeted by the gangs and criminal rings that terrorize large parts of the Northern Triangle. The gangs attempt to forcibly recruit children, especially those in their early teens, but sometimes as young as kindergarten age. Girls are forced to become "girlfriends" of gang members, which in reality are non-consensual relationships that result in rape by one or more gang members.

If children resist gang recruitment, they face rape, kidnapping, and/or murder. The weak governments that characterize the region are unable or unwilling to control the violence. Law enforcement agencies are under-resourced and plagued with corruption. For the same reasons, judicial systems fail to prosecute perpetrators; less than 2 percent of rapes, for

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<sup>3</sup> The Guardian, "U.S. Government Deporting Central Americans to their Deaths," October 12, 2016. <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>

example, are investigated and prosecuted.<sup>4</sup> Impunity is assumed, leading to even more violence.

As a result, according to the UN Refugee Agency (UNHCR), at least 58 percent of children arriving at the U.S. border have been forcibly displaced and are potentially in need of international protection.<sup>5</sup> It should also be noted that the United States is not the only country receiving asylum seekers. From 2008 to 2014, UNHCR documented a 1,185 percent increase in asylum applications from El Salvador, Honduras, and Guatemala filed in Belize, Costa Rica, Mexico, Nicaragua, and Panama.<sup>6</sup>

Furthermore, as has been well documented, smugglers are taking advantage of vulnerable families and children and facilitating their travel to the United States. Smuggling rings are highly organized and closely associated with the very same criminal cartels that are generating the violence in the countries of origin. They prey upon their victims and exploit them even further by charging high fees to transport children as young as two years old to the U.S. border.

Fundamentally, the United States will continue to face increased migration from Central America until these conditions are resolved. Families and children who are facing mounting levels of violence that their governments are unable or unwilling to control are making the only choice available to them and the only choice that any family would make—they are fleeing for their lives in search of safe haven. As the world's leading democracy, it is not surprising that many are seeking that safety in the United States.

#### **The Misguided Law Enforcement Response**

KIND is gravely concerned that the Obama Administration has failed to adopt a comprehensive protection-oriented approach to the child migration crisis since its start, instead largely gravitating toward ineffective, expensive, and ill-conceived law enforcement measures. In actuality, the crisis began in fall 2011 when the number of unaccompanied children arriving from Central America began to noticeably increase. Every year from then forward, the numbers of children arriving at the border doubled until the height of the crisis in 2014 when more than 68,000 unaccompanied children were apprehended. This represented a nearly tenfold increase from the historical norm of 7,000-8,000 children from 2004-2011.<sup>7</sup>

<sup>4</sup> The Daily News, "In Central America, Women are Killed with Impunity Just Because they are Women," January 10, 2014, <http://www.nydailynews.com/news/world/femicide-rise-central-america-article-1.1552233>

<sup>5</sup> United Nations High Commissioner for Refugees, *Children on the Run: Unaccompanied Children Leaving Central American and Mexico and the Need for International Protection*, (2015), pg. 6, available at [http://www.unhcrwashington.org/sites/default/files/1\\_UAC\\_Children%20on%20the%20Run\\_Full%20Report.pdf](http://www.unhcrwashington.org/sites/default/files/1_UAC_Children%20on%20the%20Run_Full%20Report.pdf)

<sup>6</sup> UNHCR, <http://unhcrwashington.org/children>

<sup>7</sup> U.S. Department of Human Services, Administration for Children and Families, Office of Refugee Resettlement, Unaccompanied Children's Program, *ACF Fact Sheet*, (updated January 2016), [https://www.acf.hhs.gov/sites/default/files/orr/orr\\_uc\\_updated\\_fact\\_sheet\\_1416.pdf](https://www.acf.hhs.gov/sites/default/files/orr/orr_uc_updated_fact_sheet_1416.pdf)

The crisis came to the public's consciousness when unaccompanied children began to back up at U.S. Customs and Border Patrol (CBP) stations in the Rio Grande Valley. Images of children held in cell-like rooms, sleeping on mattresses on the floor under emergency blankets, and provided triaged food and health care assistance flooded the media for weeks, creating the impression that the southern border was out of control.

In fact, weak border controls were not the source of the problem. Rather, poor planning was. Resources were inadequate to keep pace with the increased numbers, and as a result ORR lacked the bed space to facilitate the transfer of children from CBP to its custody within 72 hours as required under the TVPRA. CBP therefore had no option but to hold children for as long as two weeks in conditions largely designed for the processing of adult immigrants by an agency the mission of which is to enforce U.S. borders, not to care for vulnerable children.

This unsustainable situation then led to a series of extraordinary and unprecedented measures to gain control of the situation. This included:

- The opening of emergency care facilities on military bases in Texas, Oklahoma, and California, each of which housed hundreds of children, and streamlining release procedures to free up bed space for newly arriving children
- Fast tracking the adjudication of children's immigration cases by the immigration courts to reach decisions in their cases more quickly and to send a deterrent message to sending countries
- The use of private prison-operated family detention facilities which included lengthy detention times and inappropriate conditions for children
- Raids to arrest and deport Central American families and unaccompanied children who arrived after January 1, 2014 and have final orders of removal, regardless of whether they were represented in their immigration proceedings and had an opportunity to present their cases in immigration court.

We are concerned that these law enforcement tactics are used for deterrent purposes and to "send a message" to individuals in Central America that they should not come to the United States. When fleeing to save their lives and those of their family, unaccompanied children and mothers with young children will not be deterred by the threat of deportation. In addition to being ineffective, the use of deterrent tactics has been shown to heighten traumatic responses in a population that has already experienced intense trauma.

***Use of emergency facilities to house children***

KIND recognizes that the Administration is rightfully concerned about the prolonged housing of unaccompanied children in CBP stations. Custody that extends beyond three days in such

facilities violates both the Flores Agreement<sup>8</sup> as well as the TVPRA.<sup>9</sup> As a result, we did not oppose the use of military bases in 2014. We also supported ORR's subsequent efforts to expand its bed space in state licensed facilities to accommodate higher numbers of children; since the crisis, ORR had increased available bed space to 7,900 by August 2015.

In response to the increased arrivals from August 2015 through December 2015, the Administration again increased bed space capacity, opening temporary space that allows large scale institutionalization of hundreds of children in each facility. Thus far, such space has been established in Texas, New Mexico, Colorado, and Florida.<sup>10</sup> These facilities are spaces designed for other uses that are being converted to house children.

While preferable to CBP stations, we remain concerned that such facilities are not set up to accommodate the full needs of children who lack family support and protection and are typically traumatized, exhausted, and confused. They also do not lend themselves to the delivery of legal services such as are normally available in ORR's ongoing custodial settings. ORR has indicated that children receive legal services at the first facility in which they are housed before they transferred to the emergency facility, and that therefore legal services are not needed at the emergency facilities. However, access to legal services should be made readily available throughout the child's custody as the child may share new information that can affect her/his case that was not shared when the child was at the previous facility. Continuity in legal services will also facilitate referral of the child's case to a legal service provider after their release.

#### ***Use of streamlined release procedures***

Around the time that the child migration crisis exploded in 2014, ORR began implementing streamlined release procedures. As documented by the Associated Press, the Washington Post, and a January 28, 2016 HSGAC PSI investigative report,<sup>11</sup> these procedures included the

<sup>8</sup> Flores Settlement Agreement, <http://web.centerforhumanrights.net:8080/centerforhumanrights/children/Document.2004-06-18.8124043749>; Lutheran Immigrant and Refugee Service, Women's Refugee Commission, Kids in Need of Defense, *Flores Settlement Agreement and HHS Custody*, <https://lirs.org/wp-content/uploads/2014/12/Flores-Family-Detention-Backgrounder-LIRS-WRC-KIND-FINAL1.pdf>

<sup>9</sup> William Wilberforce Trafficking Victims Protection Reauthorization Act, PL 110-457, Section 235(b)(3)

<sup>10</sup> In December 2015, ORR announced the use and potential use of facilities in the following locations: Waxahachie, TX, capacity 700 beds; Royse City, TX (Rockwall Country), capacity 300 beds; and Holloman Air Force Base, NM, capacity 700 beds; Lakewood, CO, capacity 1,000 beds; and Homestead, FL, capacity 800 beds.

<sup>11</sup> Associated Press, "Feds' Failures Imperil Migrant Children," January 25, 2016, <http://bigstory.ap.org/article/cc07b82ec58145cca37d6ff952f334c1/ap-investigation-feds-failures-imperil-migrant-children>; The Washington Post, "Overwhelmed Federal Officials Released Immigrant Teens to Traffickers in 2014," by Abbie VanSickle, January 26, 2016, [https://www.washingtonpost.com/national/failures-in-handling-unaccompanied-migrant-minors-have-led-to-trafficking/2016/01/26/c47de164-c138-11e5-9443-7074c3645405\\_story.html](https://www.washingtonpost.com/national/failures-in-handling-unaccompanied-migrant-minors-have-led-to-trafficking/2016/01/26/c47de164-c138-11e5-9443-7074c3645405_story.html); HSGAC PSI, *Majority and Minority Staff Report - Protecting Unaccompanied Alien*

discontinuation of fingerprinting of most adults seeking to sponsor and house the children after release. In April 2014, the agency stopped requiring original copies of birth certificates to prove most sponsors' identities. It also discontinued the completion of forms that document sponsors' personal and identifying information before sending many of the children to sponsors' homes. It also eliminated criminal history checks for many sponsors.

The results have been tragic for many children. Six young people were released to a trafficker in Ohio and forced into abusive labor conditions. Others were released to sponsors who sexually abused them, denied them education, and locked them in homes where they were forced to work. Still others disappeared entirely, their whereabouts unknown.<sup>12</sup>

In KIND's own work providing pro bono legal services to unaccompanied children, we have witnessed children placed in precarious circumstances that have sometimes resulted in children being sexually abused, forced to work, charged money by the sponsor to support the costs of their care, or expelled from the home. It must be noted that the vast majority of sponsors who step forward to care for the children are responsible, caring family members. However, processes that have historically been in place to ensure that releases are in the best interest of the child must be restored and services put in place to ensure the safety of all released children.

The deeply disturbing cases of trafficking and other abuse of children released from ORR custody underscores the dire need for post-release services for these children to ensure their safety and well-being while they are awaiting the outcome of their immigration proceedings. Only a very small number of children receive post-release services—those who are survivors of severe trauma, for example—and the rest are left without access to assistance. If more children received or had access to social services after release from ORR custody, they would have someone to turn to if they found themselves in dangerous situations and somewhere to go if they felt unsafe. The provision of attorneys would also help, as the attorney would be another adult from whom the child could seek assistance, and the attorney would likely be able to tell if something seemed amiss in the child's life.

#### ***Handling of Children's Cases by the Immigration Courts***

In July 2014, the Department of Justice announced that it would prioritize the scheduling of unaccompanied children's master calendar hearings and place them at the top of the dockets. Immigration judges were further instructed to conduct these initial hearings within 21 days of the issuance of the Notice to Appear to the child. This prioritization jeopardized due process and fundamental fairness for unaccompanied children and ignored the unique vulnerabilities that such children face in their proceedings.

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*Children from Trafficking and Other Abuses: The Role of the Office of Refugee Resettlement*, <https://www.hsgac.senate.gov/subcommittees/investigations/reports>

<sup>12</sup> Ibid.

Further exacerbating the fast tracking of cases was the failure by federal agencies to adequately record children's addresses after release, which resulted in numerous children receiving no or delayed notice of their court hearings. This undercut the child's ability to obtain legal counsel, prepare their case, or in many instances, to even appear in court because the child remained unaware that his or her hearing was scheduled. This in turn resulted in numerous in absentia notices being issued, placing the child at risk of deportation back to their home countries with no opportunity to explore their possible eligibility for asylum protection or other forms of relief. In most in absentia cases, the child was unrepresented by counsel. While nearly all children with attorneys attend their court hearings, those without counsel are less likely to appear as they remain uninformed about their rights and responsibilities in the immigration system.

Moreover, some immigration judges interpreted the directive to prioritize the scheduling of master calendar hearings far beyond the initial proceeding. They failed to allow children sufficient time to obtain counsel and required them to appear for a merits hearing within weeks. In some cases, they denied the child the necessary time to pursue asylum before USCIS or Special Immigrant Juvenile Status before a state court.

***The Importance of Counsel for Unaccompanied Children in Immigration Proceedings***

The lack of counsel for unaccompanied children in their immigration proceedings is a challenge that quickly worsened as the number of child migrants facing removal proceedings increased. According to Syracuse University's Transactional Records Clearinghouse (TRAC), before 2012, 62 percent of unaccompanied children were represented in their immigration court proceedings. This rate of representation steadily decreased to an all-time low of 14 percent in 2014 at the height of the child migration crisis. This representation rate has since rebounded to approximately 49 percent.<sup>13</sup>

It is fundamentally unfair for any child to face removal proceedings without the assistance of counsel. Our staff has witnessed children as young as three years old appear in court without an attorney. This violates due process and contradicts the U.S. principle of due process and respect for the rule of law.

KIND is therefore heartened by the Administration's increasing support for legal representation of unaccompanied children as envisioned under the TVPRA. The provision of counsel to unaccompanied children not only leads to greater justice and but also creates efficiencies in the adjudication process. The Department of Health and Human Services has increased the level of resources dedicated to supporting legal services for unaccompanied children, and the Department of Justice is conducting an assessment of efficiencies that are created when children are represented pursuant to the FY14 omnibus appropriations legislation.

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<sup>13</sup> Syracuse University Transactional Records Access Clearinghouse  
<http://trac.syr.edu/phptools/immigration/juvenile/>

Among the efficiencies created by representation is the overwhelming appearance rate for children who have counsel. In FY15, 99.25 percent of children who were represented by counsel appeared in court.<sup>14</sup> Counsel is able to advise their child clients of their rights and responsibilities in the immigration system and the fact that if represented, they have a very strong likelihood of being granted asylum or some other form of relief. According to TRAC, children who have counsel are five times more likely to be granted relief.<sup>15</sup>

However, much more needs to be done to close this critical legal services gap. It has also been KIND's experience that the private sector is ready and willing to serve as a critical source of legal representation for unaccompanied children. KIND alone has generated over \$100 million in pro bono assistance in the seven years in which we have been operational. We now partner with over 300 major law firms, corporate departments, bar associations, and law schools to generate this extraordinary movement of volunteers. Pro bono representation not only ensures that children who need protection receive it, but also enhances the integrity and efficiency of the immigration system.

#### ***The Administration's Recent Raids and Deportations Targeting Central Americans***

The ongoing raids that were initiated at the end of 2015 and that target both families and unaccompanied children from Central America who arrived in the U.S. after January 1, 2014 are deeply troubling. It has been well documented that many of these families and unaccompanied children are fleeing severe and growing violence in Central America and are potentially eligible for U.S. protection.

The Administration has repeatedly said that it is conducting these raids to deter others from coming to the United States. This policy clearly has not worked, as the number of families and children alone has risen significantly again despite more elaborate border controls in the U.S., Mexico, and in sending countries. When mothers are desperate to save their children's lives and children see only violence in their future, deportation will not deter them.

There have been numerous reports of children being harmed and even killed within days or weeks of their deportation.<sup>16</sup> Moreover, targeting families and unaccompanied children contradicts the Administration's repeated commitment to focus its enforcement resources on removing felons rather than families.

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<sup>14</sup> Ibid.

<sup>15</sup> Syracuse University Transactional Records Access Clearinghouse <http://trac.syr.edu/immigration/reports/371/>

<sup>16</sup> The Guardian, "US deporting Central American migrants to their deaths," by Sibylla Brodzinsky and Ed Pilkington, October 12, 2015, <http://www.theguardian.com/us-news/2015/oct/12/obama-immigration-deportations-central-america>; UNHCR, "Deported children face deadly new dangers on return to Honduras," January 29, 2015, <http://www.unhcr.org/54ca32d89.html>; The Los Angeles Times, "In Honduras, U.S. deportees seek to journey north again," by Cindy Carcamo, August 16, 2014; <http://www.latimes.com/world/mexico-americas/la-fg-honduras-deported-youths-20140816-story.html>

The use of harsh law enforcement tactics, often in the early hours of the morning, is indefensible. The raids have generated widespread fear in immigrant communities around the country, and not just among those Central Americans who are in the targeted categories Department of Homeland Security Secretary Jeh Johnson mentioned in his January 2016 statement.<sup>17</sup> There have been numerous reports of children not attending school and canceling critical medical appointments out of fear of going out in public. KIND itself has seen children canceling intake appointments with our staff and sponsors failing to bring children to immigration court. Surely it cannot be the intent of the Administration to drive these vulnerable children further underground.

The recent announcement by Security Johnson regarding the targeted enforcement actions itself acknowledges that conditions have deteriorated in the Northern Triangle to a degree that warrants the creation of a new refugee process for those nationals.<sup>18</sup> The creation of a refugee resettlement processing initiative in the region is certainly a step forward and a clear recognition that families and children fleeing the violence plaguing the Northern Triangle of Central America are in fact refugees in many cases. Although we strongly support this new effort, it stands in stark contrast to the enforcement actions targeting families and unaccompanied children who have presented themselves at the U.S. border and requested protection. Moreover, refugee resettlement only benefits a very few recipients and is a very slow process.

The focus of the raids on families and children with final orders of removal does not make them any more acceptable. As outlined above, the fast-tracking of cases presented by families and unaccompanied children from Central America creates insurmountable barriers to due process. This is particularly true for children or those with little education, who do not speak English and have suffered extreme trauma. Even the Board of Immigration Appeals has taken the extraordinary step of granting emergency stays of removal for many of the targeted families, notwithstanding final administrative removal orders.

No removals should take place, even for those with final orders, without confirming that those affected had fair and timely proceedings, which includes ensuring that the individual had legal representation during their proceedings, adequate time to prepare their case for protection, notice of their hearing, and a full and objective hearing. Without legal representation, families and unaccompanied children face a complex and unfair legal process, which is nearly impossible for them to navigate.

The U.S. is targeting the most vulnerable immigrants to show that it is tough on immigration enforcement and to deter future arrivals, but by singling out families and children, it is only showing weakness and fear. True leadership emanates from acting upon strong values however difficult it may be. Through its actions, the Obama Administration is betraying the values upon

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<sup>17</sup> Department of Homeland Security Secretary Jeh C. Johnson Statement on Southwest Border Security, January 4, 2016. <http://www.dhs.gov/news/2016/01/04/statement-secretary-jeh-c-johnson-southwest-border-security>  
<sup>18</sup> Ibid.

which our country was founded and setting a disturbing example for other countries that are hosting refugee populations.

***Need for Return and Reintegration Assistance***

If it is determined through a full and fair proceeding that they can return home safely and sustainably, unaccompanied children and families who are deported must receive assistance upon their return to their home countries. The TVPRA requires that such assistance must be made available to unaccompanied children, including family reunification and reintegration services that help them stay in their countries safely. Without this support, families and children are vulnerable to trafficking or other abuses as they flee the same and worsening violence.

KIND's own experience with our Guatemalan Child Return and Reintegration Project, implemented on a pilot basis, demonstrates that with modest but comprehensive assistance, many children can reestablish their lives in their country of origin. Such programming, however, must be built upon adequate access to full and fair immigration proceedings before any return is initiated.

**Pending House Legislation Would Endanger Vulnerable Child Refugees and Child Victims of Trafficking**

***The Protection of Children Act (H.R. 1149)***

The *Protection of Children Act* (H.R. 1149) fails to increase protections for children as the title suggests; it instead makes children more vulnerable to traffickers, criminals, and the profound negative effects of prolonged detention. In fact, the bill would put children in grave danger.

The legislation would place children in restrictive and inappropriate settings, and put an almost impossible burden on children to establish a claim for relief from removal, including severely limiting access to U.S. asylum protections. The bill would also severely restrict the family reunification process, thus cutting children off from their best source of support, both from a child welfare and financial perspective. While recent reports of inappropriate releases are highly disturbing and demand correction, we should refrain from creating barriers to release to loving families able to care for their children.

Under H.R. 1149, when children are encountered by CBP, they would be required to demonstrate that they are victims of trafficking or have a fear of return to their home country to a uniformed officer within days of their apprehension at the border. If the child, regardless of his or her age, trauma, gender, or developmental stage is unable to do so, the bill would require DHS to summarily return them to their country of origin. This would likely result in a high percentage of children alone being returned to dangerous situations where they may face trafficking, persecution, torture, or even death. Young children would likely be automatically

removed because they would be unable to voice to DHS their concerns about trafficking and fear of return.

Cursory screening procedures applied to unaccompanied children from contiguous countries—i.e., Mexico and Canada—have already been proven to be inadequate for the identification of children with protection concerns. Under the TVPRA, Mexican and Canadian children may only be returned to their country of origin after a CBP officer screens them to determine whether they have a potential claim for asylum, have not been a victim of trafficking, or cannot make an independent decision to be returned to his or her country.

While recognizing that children from contiguous countries may more easily be returned to their country of origin, this provision was intended to accommodate the fact that such children may have protection concerns meriting full consideration before the immigration courts or USCIS. However, the provision has been found to be flawed in its actual implementation when applied to Mexican children, thus jeopardizing the protection of those who cannot return safely.<sup>19</sup> We therefore would strongly oppose their extension to Central American or other unaccompanied children.

Upon apprehension by CBP, children are tired, scared, confused, and may be suffering from dehydration or other illnesses as a result of the grueling trip. These children need time to recover from their journey and receive any necessary medical treatment, as well as explain their story to a lawyer who has experience interviewing children and knows U.S. immigration law. Children are unlikely to feel comfortable discussing all of the reasons for their flight with an armed law enforcement officer. In particular, children often will not feel safe disclosing violence they have experienced to a Border Patrol officer. In addition, post-traumatic stress disorder will prevent children from disclosing past trauma in an initial interview. Even if CBP were to implement some changes in its screening process, we do not believe it would be sufficient to ensure protection of unaccompanied children because of the extensive resources and training on child welfare that would be required to screen children effectively and appropriately.

The General Accounting Office (GAO) found in a July 2015 report<sup>20</sup> that (1) CBP's Border Patrol agents and Office of Field Operations (OFO) officers who screen unaccompanied children "have not consistently applied the required screening criteria or documented the rationales for decisions resulting from screening;" and (2) that agents made inconsistent screening decisions, had varying levels of awareness about how they were to assess certain screening criteria, and did not consistently document the reasoning for their decisions.

<sup>19</sup> Government Accountability Office, *Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody*, July 2015, <http://www.gao.gov/assets/680/671393.pdf>; UNHCR, *Findings and Recommendations Related to the 2012 - 2013 Missions to Monitor the Protection Screening of Mexican Unaccompanied Children Along the U.S.-Mexico Border*, June 2014, [http://americanimmigrationcouncil.org/sites/default/files/UNHCR\\_UAC\\_Monitoring\\_Report\\_Final\\_June\\_2014.pdf](http://americanimmigrationcouncil.org/sites/default/files/UNHCR_UAC_Monitoring_Report_Final_June_2014.pdf)

<sup>20</sup> Ibid.

UNHCR conducted fact-finding missions along the U.S.-Mexico border and also found significant failures regarding CBP's screening of unaccompanied Mexican children. UNHCR found that while the law is clear regarding DHS's burden to establish that each Mexican unaccompanied child does not have an international protection need, CBP's operational practices continue to reinforce the presumption of an absence of protection needs among Mexican children.

The experiences of children with whom KIND has worked demonstrate the insurmountable challenges of assessing the persecution and violence faced by children under cursory screening procedures:

- **Maria** was kidnapped by a local gang and raped daily. She managed to escape and fled to the United States. Maria did not reveal what had happened to her until she was interviewed in ORR custody a number of days after her apprehension by a social worker trained in child interviewing techniques. If this Act were law, CBP officers, not child welfare experts, would be required to determine whether Maria was a trafficking victim and feared return. It is unlikely that Maria would have shared her traumatic experiences with a Border Patrol officer of whom she was scared, particularly soon after her apprehension.
- **Jesus**, at just three years old, was sent by his family to the United States after his family received threats of harm against him. Jesus's family witnessed the torture and beheading of another toddler in their community by gangs. Because H.R. 1149 eliminates the current requirement under the TVRPA that children be independently able to make a decision to withdraw their request for admission at the border, a child as young as Jesus would most likely be automatically returned to his country.

H.R. 1149 would also provide for extended CBP custody of children instead of transfer within 72 hours to a child-appropriate facility administered by ORR, as currently required under the HSA and the TVRPA. As witnessed in 2014, CBP short-term holding facilities are not designed to house children. It is also unreasonable to ask CBP officials and agents to spend their time caring for children in their custody instead of focusing their limited resources on law enforcement activities that target individuals who present a danger to the United States.

The results of extended CBP custody of children were clearly evidenced during the height of the child migration crisis in 2014; children huddled in crowded holding cells, slept on mattresses on the floor, and received only minimal services. The cost of converting such facilities to become appropriate settings for children who range in age from toddlers to teenagers would likely be exorbitantly high.

H.R. 1149 would also effectively undermine due process. Under the Act, if a child in CBP custody has successfully made a claim of trafficking or fear of return, he or she would only have 14 days to obtain counsel and prepare his or her case before appearing before an immigration judge. These accelerated removal proceedings would make it even more difficult for a child to find an attorney who can help them articulate their claim for relief. This would be exacerbated

by the legislation's prohibition of government support for the provision of legal services to these children.

KIND's own experience working with unaccompanied children underscores the critical need to recognize the unique vulnerabilities of children in their immigration proceedings. Our legal staff and our volunteer attorneys spend numerous hours developing trust with the child client so that they feel comfortable articulating their experiences to us and so that we can determine whether or not they may be eligible for some form of protection under U.S. law.

In addition, the fast-tracked procedures during a child's stay in federal custody as envisioned under H.R. 1149 also would undermine the progress made since passage of the TVPRA in developing a strong corps of pro bono attorneys to represent children in their immigration proceedings. KIND has trained more than 11,000 attorneys from our 300 major law firm, corporate, bar association, and law school partners to provide high quality representation to children in their proceedings. This private sector initiative not only serves the interests of the children in question, it also serves the government by ensuring the efficiency and fairness of the proceedings. Pro bono lawyers who are dedicating their time, resources, and expertise on a volunteer basis will be unable to serve children effectively if the children are in detention and the proceedings are drastically expedited.

In addition, under this legislation, children would be required to file their initial request for asylum before an immigration judge. Under the TVPRA, unaccompanied children are provided the opportunity to present their case in a non-adversarial setting before an asylum officer trained in refugee law. This more informal setting is more conducive to the ability of children to comfortably articulate their reasons for seeking protection in the United States.

Requiring children to first appear before an immigration judge not only has adverse consequences for the children, but it will prove highly problematic to the immigration court system. The system is already backlogged with almost 500,000 pending cases, and if judges are required to adjudicate more cases of unrepresented children, it will only further clog an overwhelmed system.<sup>21</sup> Without the proper support, legal representation, and access to information, relief would be nearly impossible to obtain, even with a strong trafficking or asylum claim.

Finally, H.R. 1149 would change the eligibility criteria for abused, abandoned, or neglected children to gain protection through Special Immigrant Juvenile Status. Many children currently eligible for this form of immigration relief have been saved from being sent back to an abusive parent in their home country. For children who suffered abuse at the hands of a parent in their home country, they can now live in the United States with a parent who will protect them and keep them safe. If H.R. 1149 were to become law, hundreds of children could be sent back to dangerous situations, forced to live on the streets or in abusive homes.

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<sup>21</sup> [http://trac.syr.edu/phptools/immigration/court\\_backlog/apprep\\_backlog.php](http://trac.syr.edu/phptools/immigration/court_backlog/apprep_backlog.php)

***The Asylum Reform and Border Protection Act (H.R. 1153)***

The *Asylum Reform and Border Protection Act* (H.R. 1153) would roll back critical protections for children under the TVPRA, expand the inappropriate use of immigration detention for children, limit access to both due process and protections available to children under both asylum and SIJS, and fail to provide for the safe and sustainable repatriation of children.

H.R. 1153 eliminates protections vouchsafed by the TVPRA in a number of ways. The bill limits the definition of an unaccompanied child, and effectively restricts eligibility for trafficking and asylum protections to a very few. The bill also erodes due process for children as it allows CBP to place children traveling alone in expedited removal proceedings. The accelerated nature of these proceedings would greatly increase the likelihood that these children will not have enough time to find an attorney to represent them. This means unaccompanied children -- even babies and toddlers-- would be forced to make a case on their own while in a CBP holding cell. This thoroughly undermines any due process protections for children and places children in danger of being returned to conditions that threaten their safety and well-being and even their lives.

H.R. 1153 also creates a more complicated and adversarial asylum process for unaccompanied children. The legislation would create a higher standard for proving a threshold fear of persecution, extend the one-year asylum bar and safe third country provisions to children, and force children to present their asylum claims in a proceeding before an immigration judge instead of through an interview with an asylum officer, further burdening our backlogged immigration courts.

We are particularly concerned with the sections of the legislation that authorize detention for the duration of the child's proceedings. In addition to adding a layer of trauma to an already vulnerable population, it is difficult even for adult immigrants to obtain a lawyer and navigate the immigration system while detained.

Our child welfare system has long recognized the adverse impact of institutionalizing children. Also, by permitting the release of a child to a relative or responsible adult who then assumes responsibility for the care of the child, the federal government avoids substantial costs. It has also been demonstrated that released children, when represented by counsel, overwhelmingly appear for their court hearings; as noted above, over 99 percent of children in fact appear in immigration court when they are matched with an attorney who can advise them on their rights and responsibilities in the immigration system.

Not only would this Act extensively limit access to asylum and trafficking protections, it would virtually eliminate access to U visas for unaccompanied child victims of crimes in the United States and for Special Immigrant Juvenile Status, a two decades-old form of humanitarian protection for abused, abandoned, and neglected children. For example:

- **An eleven-year-old girl named Jocelyn** was sexually abused by her stepfather and her mother refused to protect her. Through a family member, Jocelyn was able to locate her birth father in the United States and fled for protection. If H.R. 1153 were law, CBP would be charged with determining whether Jocelyn suffered sexual abuse, an expertise far outside its scope as the law enforcement agency charged with the protection of U.S. border security.

- **A fourteen-year old girl named Lucia** was lured into the U.S. with false promises of working on a farm. After she was brought across the border, she was held in a house and raped repeatedly by unknown men. The house was raided and she was sent to an ORR therapeutic home for girls where she was able to talk about the rapes and care for the child that she conceived as a result of the rapes. If this Act were to become law, CBP would have sole authority to determine whether Lucia was a victim of a crime or trafficking in the U.S., and without access to trauma support and pre-natal care, Lucia would have been automatically returned to her traffickers who would continue to operate with impunity in the United States.

Finally, this Act provides for an extended period of time before children are transferred out of CBP custody. Thus, a child traveling alone would spend an increased amount of time in CBP custody, which has been found fundamentally inappropriate for children. If this legislation were enacted, we would once again experience the troubling situation of children in CBP custody that we witnessed during the summer of 2014 when thousands of children spent weeks in overcrowded cement holding cells near the border with insufficient food, supplies, and health services.

H.R. 1149 and H.R. 1153 are fundamentally unnecessary in their attempts to roll back protections for unaccompanied children currently available under Section 235 of the TVPRA. The TVPRA provides a framework that allows for the full adjudication of unaccompanied children's claims for protection through timely proceedings while ensuring their appropriate care in the interim. The law represents a sound approach toward balancing the ability of the U.S. government to address child migration with the protection of children fleeing human trafficking, violence, and abuses in their home countries.

#### **Recommendations on Improving the Protection of Unaccompanied Children**

Unaccompanied immigrant and refugee children are—first and foremost—children. Whenever possible they should be safely released to family who are able to care for them pending their immigration proceedings. They are entitled to due process of law, but also deserve the protection and care we would want extended to any child. In virtually every other area of U.S. law, we recognize that children require additional protections because of their reduced developmental capacity. Immigration law is no different. We should expect that all children are provided a heightened level of protection in our legal, judicial and adjudicative processes.

This is not only the humane response, but also improves court efficiency and is more cost effective than federal custody. The U.S. should adhere to three principles that ensure fair

proceedings and protect children's safety: 1) all children should have lawyers to assist them in accessing the legal protections for which they are eligible; 2) all decisions should be made with consideration for the child's best interests and child advocates must be appointed for the most vulnerable children; and 3) funding for post-release services is vital to ensure children's safety, security, and integration in their family setting and their local communities.

#### ***Access to Counsel***

All children in adversarial proceedings should be afforded counsel. Upon release from ORR custody, approximately half of unaccompanied children appear in immigration court without representation. Children as young as toddlers are often forced to appear before an immigration judge in a formal courtroom. While the child is unrepresented, the government is represented by an attorney who has been trained U.S. immigration law.

Furthermore, the prioritization of hearings for unaccompanied children—the so-called “rocket dockets”—that began in fall 2014 often do not allow children enough time to find an attorney and prepare for their case. This increases the number of children going through proceedings without representation, as well as those who receive removal orders in absentia.

Every unaccompanied child should have legal representation in immigration proceedings – if necessary, at government expense. The TVPRA laid the groundwork for this by mandating that the Secretary of Health and Human Services ensure that unaccompanied children are represented by counsel to the maximum extent practicable. HHS should expand its support for the facilitation of pro bono representation by the private sector. Lawyers from the law firm and corporate communities have demonstrated great commitment to representing unaccompanied children when supported by legal services organizations that can train and mentor them. A robust mix of government-funded and pro bono representation by the private sector is needed to fill the enormous representation gap that currently exists.

#### ***Eliminating Fast-tracked Immigration Court Proceedings for Unaccompanied Children***

Unaccompanied children have been inappropriately designated as a top priority for adjudication of their cases by the immigration courts. The Administration should immediately reverse this decision and reserve its resources for the priority adjudication of cases of individuals who present a threat to the safety and security of the United States.

#### ***Ensuring the Safety of Children while in Federal Custody and after Release***

ORR must continue to expand its bed space capacity in licensed child welfare facilities to accommodate the fluctuating numbers of unaccompanied children arriving in the United States.

It should also take immediate steps to enhance the screening procedures for individuals who serve as sponsors for children upon release. This includes reinstituting fingerprinting, criminal background checks, and identification procedures to ensure that potential sponsors are indeed who they say they are and do not pose a threat to the safety and well-being of the child.

ORR should also increase its support for the delivery of comprehensive psychosocial services to unaccompanied children after their release.

***Addressing the Root Causes of Migration from Central America***

KIND applauds Congress for providing \$750 million in funding for root causes in the FY16 omnibus spending bill. This funding will provide essential assistance to a region that the U.S. has long neglected. National child welfare and education systems in the top sending countries are weak and often unable to provide protections to at-risk children. The U.S. should work with the governments of El Salvador, Honduras, and Guatemala to enhance these systems and provide meaningful opportunities for children and young people to remain in their countries of origin safely and sustainably.

We request an additional \$750,000 in FY17 as part of a sustained and multi-year effort to address the root causes of unaccompanied child migration from these three countries. Until violence in the region significantly diminishes, unaccompanied children and families will continue to seek protection in the United States.

I mentioned earlier that KIND welcomes the Obama Administration's decision to engage with UNHCR to screen those fleeing extreme and growing violence in Central America to determine if they are eligible for U.S. protection as an important step toward recognition that the region is experiencing a refugee crisis. However, refugee resettlement is a limited response and in no way a substitute for the ability to apply for asylum in the U.S. through a full and fair process, which includes having an attorney to represent them in their case.

A key to protection will be ensuring that claims are heard in a timely way so that a long term solution can be reached—whether it is resettlement in the U.S. or in another country in the region—as quickly as possible. This is particularly important for children as an uncertain fate is damaging to their development and well-being. Child protection officers and best interest determinations must also be built into the process for cases involving children.

Claims for refugee status must be analyzed with an acknowledgment of the many different types of claims involving threats or harm by gangs, narco-traffickers, and other organized criminal syndicates—including sexual and gender-based violence targeting both girls and boys.<sup>22</sup> Additionally, children's claims for protection must be examined with a child-sensitive lens that takes into account their development and particular vulnerability.

The Central American Minor (CAM) in-country refugee processing program must also remain in place as a complementary approach to protection. Children in the CAM program, as well as this

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<sup>22</sup> KIND, CGRS, *A Treacherous Journey: Child Migrants Navigating the U.S. Immigration System*, February 2014. <https://supportkind.org/resources/a-treacherous-journey-child-migrants-navigating-the-u-s-immigration-system/>

new resettlement program, also need access to pro bono attorneys to explain the process and support them in preparing their cases.

A robust asylum process that ensures due process and fundamental fairness is the most critical component in addressing a refugee crisis. Resettlement programs can be used strategically to support this response, but must not be viewed as a substitute for U.S. asylum obligations, as well as the asylum obligations of Mexico and other surrounding countries.

***Supporting the Reintegration of Children for whom Return in in their Best Interests***

If after due process is afforded and a decision is made to return a child to their country of origin, the United States should support programs that assist children in the return and facilitate their reintegration into their families, homes, and communities. U.S. funding is currently narrowly focused on the construction of reception centers that provide only initial services immediately after return. Comprehensive services should be put in place that address the needs of the child on a longer-term basis. These should include education, health care, family reunification support, and jobs skills training.

***Creation of a Contingency Fund to Support the U.S. Response to Migration Crises***

This hearing has raised the pertinent question of whether the Central American migration crisis is the “new normal.” Only time and the robustness of the U.S. response will determine the answer to that question. To assist in finding sustainable solutions, Congress should create a contingency fund that federal agencies charged with the care of unaccompanied children, including the Departments of Homeland Security, State, Health and Human Services, and Justice, can tap into to address crises comprehensively while balancing urgent protection needs with bringing order to unforeseen migration flows.

**Conclusion**

Congress has a unique and important role in the response to the increased number of unaccompanied children seeking protection in the United States. Robust oversight of and provision of resources to the agencies charged with the care and custody of unaccompanied children is essential to ensure that these children are housed in safe and appropriate facilities and conditions while they are in federal custody. Children’s immigration proceedings must be fairly adjudicated in a timely way and children must be represented by pro bono counsel when they cannot afford counsel themselves. Finally, Congress should ensure that children are safely and quickly released to their families while awaiting their immigration process utilizing procedures that ensure that such releases are in the best interests of the child and ensure their safety and well-being. Ultimately, the long-term solution to the Central American migration crisis lies in addressing the root causes of the flow.

Fundamentally, we must remain steadfast in our commitment to protecting vulnerable migrants and remember that unaccompanied children are children first and foremost. KIND looks forward to working with Congress on legislation that will improve the responses of our immigration, asylum, and refugee systems to the protection of unaccompanied children.

Thank you again for the opportunity to appear before you today.

Mr. LABRADOR. Thank you very much. We will now proceed on the 5-minute rule with questions. I will begin by recognizing myself for 5 minutes. This Committee is well aware that the 2014 surge along the southwest border caught the Department of Homeland Security by surprise. It was almost completely unprepared. The lagging response and the resulting executive actions have proved disastrous in the year since. Current immigration law and enforcement have taken a clear back seat to policy and political gain. I have heard the same troupe here today. It is not illegal to seek asylum in the United States. We all know that. It is not illegal to seek asylum, but the reason you seek asylum is because you are here illegally in the United States. Asylum is a defense to being in the United States illegally.

So that is totally meaningless, and I have heard that three times already today. Current immigration law enforcement have taken a clear backseat. It has become all too apparent that the Administration's own actions have largely contributed to this surge, and I am truly offended that this crisis on our border could be labeled as the new normal, or to be actually accepted as something that is normal.

As we now face the start of another possible surge, I look forward to working with the Committee to continue this discussion beyond today's hearings and to create a viable solution to our crisis. Mr. Judd, what is the percentage of people who appear in court after an NTA?

Mr. JUDD. There has been several hearings on this topic, and it has been as much as 80 percent according to Senator Johnson, and as little as 40 percent, according to other statistics. The actual number is not completely known, but it is somewhere in between that.

Mr. LABRADOR. Between 40 and 80 percent, is that what you are saying?

Mr. JUDD. I am sorry?

Mr. LABRADOR. Between 40 and 80 percent?

Mr. JUDD. Yes, sir.

Mr. LABRADOR. Based on your communication with Border Patrol agents along the southwest border, do you believe that we are at the beginning of a surge similar or worse than what we witnessed in 2014?

Mr. JUDD. We are actually seeing a lot more at this point than what we did in 2014.

Mr. LABRADOR. Do you believe that the Border Patrol currently has the resources including manpower to adequately respond to the growing surge?

Mr. JUDD. No, we do not.

Mr. LABRADOR. Your written testimony gives very clear examples of the flagrant disregard for our immigration laws. You refer to it as mere suggestions that carry little or no consequences. How would Border Patrol be better equipped if agents were not required to comply with priority enforcement program directives or policies mandating release?

Mr. JUDD. Well, at a minimum we would set up deportation proceedings on these individuals that we arrest. But unfortunately,

right now, as long as they claim to have been here before January of 2014, we just let them go. We do not even set them up for—

Mr. LABRADOR. And they do not even have to prove it as you said in your testimony. They just have to claim it.

Mr. JUDD. They just have to tell us that they have been here.

Mr. LABRADOR. And an attorney could suggest to them that all they have to do is claim it because they are not, right?

Mr. JUDD. A lot of agents will actually ask them where they heard this from and they will tell the agents, “Well, I was just told to tell you.”

Mr. LABRADOR. Okay, and you say a lot of agents say that they were told to tell them. So when they come to you, do they tell you that they are leaving those countries because of the violence for the most part?

Mr. JUDD. There is two separate individuals that we have to look at. The juveniles when we first arrested them, starting in 2014, they were told that all they have to do is ask for asylum. And right now, the Border Patrol has actually told us that we can no longer ask them that question, why are they coming anymore. Cannot even ask them that question? In some places we still do, but we are being told that you cannot even ask why they are coming here.

Mr. LABRADOR. What do you think are the consequences for agents who are unwilling to comply with these limiting policies?

Mr. JUDD. They will be terminated.

Mr. LABRADOR. So for wanting to enforce the law that is in the books, they are going to be terminated from their jobs?

Mr. JUDD. Absolutely. If they do not comply with the policies that are given.

Mr. LABRADOR. Have you had any experience of any agents being terminated?

Mr. JUDD. No, our agents comply with the policies that we are given.

Mr. LABRADOR. What can this Committee and this Congress do to assist the Border Patrol in its mission and in order to respond to the growing surge?

Mr. JUDD. Well, the first thing is we have to understand that the laws are the laws. Policies should not trump the laws. We should not be able to bypass Congress and set policies to trump the laws as long as we are enforcing the laws. Again, if these juveniles or family units would come through the ports of entry, that is legal. That is perfectly legal. If they would come through the ports of entry and ask for asylum, but to cross the border, that is illegal, and therefore we must support a consequence for that.

Mr. LABRADOR. Thank you. Mr. McCraw, what would happen, you have vast experience with law enforcement so I am going to ask a question not about immigration. What was your area of expertise when you were in the FBI?

Mr. MCCRAW. It was organized crime.

Mr. LABRADOR. Organized crime.

Mr. MCCRAW. Mexican drug trafficking organizations, Columbians and South American.

Mr. LABRADOR. So if I would have sent a message to the organized crime community in your area that “Hey, it is illegal to do

X but we are just not really going to enforce it," what would have happened to organized crime in that area?

Mr. McCRAW. Everybody is going to exploit the seams, as Agent Judd appropriately noted that they were very flexible, adaptable and networked and they are going to exploit all opportunities, including the recruitment of our children.

Mr. LABRADOR. Thank you. My time has expired, and I now recognize Ms. Lofgren.

Ms. LOFGREN. Thank you, Mr. Chairman. Before my questions, I would like to ask unanimous consent to place in the record statements from 13 primarily religious groups, along with a letter regarding temporary protected status from a number of groups.\*

Mr. LABRADOR. Without objection, they will be entered into the record.

Ms. LOFGREN. Thank you. I thank all the witnesses for being here today. And obviously, when you take a look at a complex situation, there is never just one thing going on. Obviously there are smugglers taking advantage of the situation. But I am mindful that we have—I got these statistics from the Border Patrol just yesterday. In terms of unaccompanied minor children apprehensions, from Belize, there was one child; from Costa Rica, there were two children; from Nicaragua, there were 52 children; from Panama none; from El Salvador, 5,000 some odd; Guatemala, 6,000; Honduras, 2,800. Something is going on in those three countries, and that is not going on elsewhere in the region. And so, I think it is important. None of us wants to see thousands of children showing up at the border, they have been exploited on the way, on the journey. It is not a good situation.

But the question is how to deal with this? What is causing this situation? And I know, KIND, and first, what a great name for an organization, KIND. Nobody thinks little children should have to fend for themselves without a representation. Your organization has represented thousands of kids. Can you give us some examples of the kinds of stories that you are hearing when you really get into it with these kids and what is going on, why did they come, what has happened to them? So we can get a flavor for what is really driving this situation?

Mr. LABRADOR. Your mic is not on.

Ms. YOUNG. Thank you. First, I would like to say it should be an immediate red flag when you see a child who is under age 18 migrating across this world alone leaving their homes, leaving their communities crossing international borders. That is not normal for a child. So something is going wrong at home that is causing them, driving them out, and in fact, in this situation, it is the violence in three countries: Guatemala, El Salvador, Honduras. About 97 percent of our case load at KIND currently is from those three countries. Conditions in countries like Panama are not that way. These are countries that are much more stable, so children are not fleeing, simply put.

To share one story, Claudia, a 14-year-old girl who eventually won asylum when we matched her with a private sector lawyer,

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\*Note: The material referred to is not printed in this hearing record but is on file with the Subcommittee. Also, see For the Record Submission—Rep. Lofgren at:

<http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=104402>.

she was abducted from her home by gangs. She was held in captivity. She was gang raped by those gangs for 4 days. Her family during this period sought the assistance of the police and the community who told the family we cannot help you. Claudia eventually escaped. She went home. Her family relocated to another part of the country. The gangs found her there and began to threaten her again. Again, the family turned to the local police and asked for assistance and the police said, "We cannot help you."

Claudia's family did the only thing they could. They sent her out of the country in search of protection. These are not young people who can line up and apply for a visa at a U.S. embassy. They are running for their lives.

To share another story, documented by a board member of KIND, an 8-year-old child's body, her corpse, was found on the streets of Honduras, her throat slit and her panties stuffed in the wound. These families are doing the only thing they can. These children are doing the only thing they can. They are running for their lives, because they will be murdered if they remain home.

Ms. LOFGREN. Let me ask you, in terms of the violence that is going on in these Central American, in these three countries. The United Nations is now going to engage with the U.S. and other countries in the Western Hemisphere to provide some kind of refugee processing in those countries, and hopefully, safe haven in a third country. Not necessarily the U.S. I mean, it could be Costa Rica or Chile. We do not know. Have you been in touch with that process, and do you know where that process is at this point?

Ms. YOUNG. We have been engaged in the first stage of the refugee resettlement program, which is the so called CAM program where children can present themselves while still in their home country, and apply for resettlement. We are very gratified by the decision of the Administration to work with the UNHCR to expand this processing into third countries, so that people are able to be safe in a country such as Mexico or Belize, somewhere in the neighborhood, while they go through the resettlement process.

I should note, however, that resettlement is a limited response. They are targeting roughly 4,000 individuals for resettlement to the United States and resettlement takes a very long time. So while it will be a critical option for some, it is not the full solution to the crisis.

Ms. LOFGREN. I will just close. I agree. I mean, we have probably more refugees in the world today since World War II. I mean, you take a look at what is going on in Europe, I mean, in Central America, it is huge. But the answer is not just resettlement. It is peace, so that people do not have to flee, and I was talking to Chairman Gowdy before he left about what had been going on in Columbia. And we are no longer seeing refugees from Columbia, because with the help of the United States and other Nations in the Western Hemisphere, and the Colombian people themselves, they got control of their situation. And it is not a perfect situation. There are problems, but we do not have a complete failed state in Columbia anymore and it is clear that we have to work with others so that these three countries can be stabilized and have the rule for law so that people do not have to flee for their lives. And with that, Mr. Chairman, I yield back.

Mr. LABRADOR. Thank you, and I now recognize the gentleman from Texas, Mr. Smith.

Mr. SMITH. Okay. Thank you, Mr. Chairman. Let me address my first question to Mr. Judd, Director McCraw, and Ms. Vaughan, and it is this: Do you feel that the majority of individuals trying to enter the United States illegally from those three primary Central American countries are motivated by the President's policies that they feel will allow them to stay in America? Mr. Judd?

Mr. JUDD. We no longer ask the individuals what the motivation is, but in early 2014, yes. When we asked what the motivation was, yes, it was based upon policy.

Mr. SMITH. Right. And the Department of Homeland Security report said around 70 percent, I believe. Mr. McCraw?

Mr. MCCRAW. I do not have enough information to comment on that, Congressman.

Mr. SMITH. Okay, Ms. Vaughan?

Ms. VAUGHAN. Yes, I would agree with that. Based on what we have seen from intelligence reports from the Border Patrol and ICE, and based on what the migrants themselves tell journalists, and also a team of researchers we sent down to the area to interview people, the vast majority are coming because they understood that they would be allowed to stay, and that the smugglers are telling them and advertising in the news media in their home countries that if they get to the border, that they will be released and allowed to stay for an indefinite period of time.

I do not doubt that there are a few, you know, very compelling cases of people who would benefit from our protection, but the majority of them are simply here to join family, friends, or because they heard they could get away with it.

Mr. SMITH. Right. Mr. Judd, was that a directive from the Administration that said "Do not ask that question any longer?"

Mr. JUDD. No, sir it was not. That came from our management.

Mr. SMITH. Okay, from the management as well. Maybe they did not like the result they were getting, I do not know. The other point I think to make is we sometimes hear about the violence in those three Central American countries. Crime rates are actually going down in two of the three of those countries, and the crime rates themselves are still less than the crime rates in several American cities.

Unfortunately, I think there is a lot of biased media coverage and you seldom see the media acknowledge that the primary motivation are the President's policies and the expectation of amnesty when they arrive.

Ms. Vaughn, and Mr. Judd too, and Director McCraw, I would like to get some figures just to have a better idea of the extent of the problem. And let me ask you all if you have information in regard to last year, 2015, as to how many individuals entered the United States illegally or came in on visas and over stayed or are in an illegal capacity now? Do we have a figure, a rough estimated figure for those number of people who contributed to the illegal population? Ms. Vaughan?

Ms. VAUGHAN. The number, according to the Border Patrol statistics, there are about a quarter of a million Central American juvenile—

Mr. SMITH. Okay, I am not talking about Central America. I am talking about overall, any country.

Ms. VAUGHAN. I do not have a number off the top of my head of the total number of people who have come illegally. We do not know, because they do not know who evaded the Border Patrol. As far as over stayers, it is about half a million people in 2015 who did not depart when their visa—

Mr. SMITH. Half are just the visa over stayers?

Ms. VAUGHAN. Not all of them are still here. They think just over 400,000. That is just the visitor visas. That does not count the guest worker visas or the exchange.

Mr. SMITH. Okay, I had no idea the problem was that great. To me that is a huge change from what I have heard before. A change that hundreds of thousands of more people in the country illegally than we might have imagined.

Mr. JUDD, do you have any estimate as to the number of people who come into the United States each year that are not—we just heard about the visa over stayers, people coming across our southern border. What is the estimate as to how many coming in illegally?

Mr. JUDD. I am not privy to the agency statistics, but I can give you from the Border Patrol agents what they tell you. Just to give you a real quick story. Chairman Chaffetz was down on the border, and he was allowed to patrol the border with Border Patrol agents. He had every single resource available to him. You name it, he had it. He had helicopter, he had ATVs, he had horse patrol, he had every single resource available to him. There were seven drug smugglers that crossed the border while he was there that he got to chase. Of those seven drug smugglers that he got to chase with every single one of those resources, they caught zero.

When he was talking to the patrol agent in charge of the Border Patrol station, he asked, "What would you estimate the percentage of those that cross the border illegally, what would you estimate the percentage is that you actually arrest." And the patrol agent in charge, the highest-Ranking Member of that station of about 350 agents, he told him that if they hit a sensor, we arrest probably 50 percent. If they do not hit a sensor, it is well below 50 percent of what we arrest.

Mr. SMITH. Right. What is your estimate as to the number, just estimate, as the number of individuals, or maybe I should say the fraction of individuals who are apprehended versus who get successfully get into the United States illegally?

Mr. JUDD. A safe estimate from the Border Patrol agents would be that we arrest about 40 percent of what actually crosses. So, if you got the official numbers from the agency of what we arrest, that is about 40 percent.

Mr. SMITH. So if we arrested 400,000, then 600,000 would be coming in illegally?

Mr. JUDD. Correct.

Mr. SMITH. Something like that. When I have talked to Border Patrol agents in south Texas, the estimates have been anywhere from we only apprehend one out of two to one out of five, and that is about I think what you are saying. Okay.

Mr. McCRAW. The challenge you have is you do not know what you do not know, Congressman. Until you have sufficient detection capability in place, you cannot really tell how many you did detect and apprehend or did not, and I can tell you from a Texas standpoint the border region, you know as of in fiscal year 2014, these are unofficial Border Patrol statistics. They had 341,132 apprehensions. And it can also tell you the trending because we talked about Central America and the three countries. It is also trending, just as in children, it also trends across in terms of all OTMs, it parallels about 75 percent of the apprehensions in the Rio Grande Valley, which was the center of gravity for drug and human smuggling right now.

Mr. SMITH. As you pointed out I am going to be there at tomorrow. My time has expired. Let me just say that I do not think we have ever had a President of the United States less willing to enforce immigration laws and implement policies that I think encourage illegal immigration. I thank you all for your testimony.

Mr. LABRADOR. The gentleman's time has expired. I recognize Mr. Conyers.

Mr. CONYERS. Thank you. Attorney Young, you have got a great organization, KIND. I think many people would be surprised to learn that children are expected to appear before an immigration judge and a trained government attorney without legal representation. What do you think can be done to increase the number of lawyers for unaccompanied children?

Ms. YOUNG. Thank you, Congressman Conyers, and that is a very good question. Bottom line, our experience has been that the private sector actually is very willing to step forward to represent these children on a pro bono basis. There has really been an extraordinary response from our over 300 major law firm corporate legal department, law school, and bar association partners, and at the height of the crisis in 2014, we had companies like Disney call us and say, "We want to help you. What can we do?" And 70 of their attorneys appeared at a training 2 weeks later.

So that is one part of the response that I think it would be very wise to capitalize on, and with groups like KIND behind those attorneys, what we see is that they provide very high quality representation to the children, and in fact, the children that we work with, over 90 percent of them are granted some form of relief under our immigration laws, asylum or otherwise.

In addition, however, there are some cases that are not appropriate for placement with private sector attorneys who tend not to be immigration lawyers. These are corporate lawyers, tax lawyers, whatever else.

And those cases can be very well handed by the NGO community that has expertise in children's immigration law. I would also just like to point out that our experience is that the court system runs much more efficiently when children are represented by counsel. Immigration judges find it very difficult to proceed on a case when they have a 3-year-old standing in front of them with no lawyer. How do you question that child?

I, in fact, saw a 5 year old in court one day clutching a doll. The immigration judge asked her a series of questions about why she was in the United States, where she was living. That child just

looked at him, her head barely above the microphone, could not answer a single question until he finally asked her, "What is the name of your doll?" And she said in Spanish, baby, baby doll. And that was the only question that was answered during that hearing.

Mr. CONYERS. Why is legal representation so critical in solving the crisis at our southwest border?

Ms. YOUNG. Again, our experience is that most of these children, when provided the opportunity to present their case before an immigration judge, when they are provided a full and fair hearing, are in fact eligible for protection, that legal counsel is critical to assist the child through that process. Some of my co-panelists mentioned Border Patrol questioning children. I would suggest to you that a Border Patrol agent who is in a chaotic Border Patrol station wearing a uniform armed is not going to elicit information from a child about why they are here. These kids are terrified. They are tired. They are traumatized. They need time to recover. They need an adult who is advocating for them to elicit the kind of information that can form the basis for a claim for immigration relief.

Mr. CONYERS. Thank you. You know, many have suggested that the journey for Central American children is dangerous and we should do everything we can to prevent these children from leaving their homes in order to protect them from harm. How do you respond to that kind of view?

Ms. YOUNG. I would just quote one family who I think said it best, "I would rather see my child die on the way to the United States than on my own doorstep." I am not going to defend smugglers. This is a large illicit business. The smugglers are very abusive to these children, but when these kids are facing the kind of dangers they are in their home countries, they would rather take that risk and hope that they will find safety in the United States than stay home.

Mr. CONYERS. Now, many suggested that violence, particularly gang violence, is prevalent in many of our United States cities. And the situation in the Northern Triangle is no different. Would you agree with that finding?

Ms. YOUNG. Two points: first, the rates of violence in Central America are much higher than cities across the United States, such as Detroit. Secondly, I would also say the big difference is in the United States there are functioning police forces. There is a functioning judicial system that can address crime in this country. What you see in Central America is these countries are too weak, they are too corrupt. Law enforcement does not follow through to pick these criminals up. The judicial system fails to prosecute individuals, so these crimes are committed with complete impunity in these three countries.

Mr. CONYERS. Let me squeeze in this last observation.

Mr. LABRADOR. Without objection.

Mr. CONYERS. Thank you, Mr. Chairman. Do you think it is appropriate to use the term "gang" to describe the kinds of organized crime and violence in these three countries?

Ms. YOUNG. What we see increasingly are organized transnational criminal cartels, and the same cartels that are involved in creating the violence in the home countries are the same cartels that are then preying on children and families as they migrate and

conducting the human smuggling and human trafficking operations. So, this is highly organized across the region.

Mr. CONYERS. Thank you very much. I thank the Chair.

Mr. LABRADOR. Thank you. The gentleman's time has expired and I recognize the gentlemen from Illinois.

Mr. GUTIERREZ. Thank you very much. Pleasure to be here this morning with all my distinguished colleagues. Once again, it is always good to see a labor union that the Republicans actually invite to come and give testimony. It is the only one. Just to show you there is always an exception to the rule, even when it comes to the labor unions and I wonder why they love you so much.

Mr. LABRADOR. I think we love the labor unions and Obamacare as well, but that is all right.

Mr. GUTIERREZ. But Mr. Chairman, you cannot interrupt when I am speaking, it is my time. That is unfair. You get your time later on, right? I want my 10 seconds back. But having said that, it is always interesting. And I was really fascinated by Mr. Judd, because he said that Mr. Chaffetz went down there, and they had ATVs and they had helicopters, and that the seven people that crossed the border, the drug smugglers that crossed the border, none of them were apprehended. It is always amazing to me how seven people can cross the border, but we know that they were drug smugglers. We did not catch them. We did not interview them, but they were drug smugglers. Because that kind of fits, right? Let's always talk about anybody that crosses the border as a drug smuggler and not anything else coming to the United States, because crime and immigration always seem to rhyme very well with the majority's perspective when it comes to immigration in this country.

So, I would like to interview those seven too to see if it is really true. It is amazing just how you can see just what it is that has brought them here to this country. So I would like to speak a little bit about the situation that is going on, because it just seems to me that—I said yesterday, I gave a speech on the House floor. And I said watch tomorrow Judiciary Committee is going to have a hearing. They are going to do a couple of things. They are going to equate immigration to crime, and they are going to say that it is all Obama's problem.

Well, I guess I did it. I pat myself on the back because that is exactly what has happened here. It does not resolve the problem, because even if we built the best, greatest wall between Mexico and the United States, they would still ask the testimony by those offered by the majority here today they would still be hundreds of thousands of people coming to the United States and staying illegally in the United States once their visas expire. That is the testimony that we have been given here. But all we want to do is focus on building a wall or a fence. Of course paid for by Mexico, yet by the very testimony of the people here, the tens of thousands, hundreds of thousands of people did not come from Mexico, yet that is where we are going to build the wall. Which speaks to the fantasy about what we are doing.

What we should do is we should create a system that allows people to come not through Coyotajes, not through drug smugglers, not through human traffic, but with a plane ticket, with a visa, a legal

way to come to the United States of America, so that we can have an organized fashion in which we have our immigration policy set forth. That is what we should be doing. Instead, we continue to have a system that allows the drug smuggler to exploit the children. I would like to thank the gentlelady from California by addressing the issue.

They are not coming from Belize. They are not coming from Costa Rica. Nicaragua is the poorest country in Central America. They are not coming from Nicaragua. They are coming, fleeing the drug cartels in three Central American countries, and I get offended that Members of this Judiciary Committee say that they are coming here illegally. It is not illegal to come to the border of the United States of America and to ask for political asylum in the United States, to ask for refugee status in the United States. That is not illegal. That is a law and a statute of the United States of America.

So, we always, but we always have to equate them, right? Illegal, criminal, even children applying. Now, as you can tell, I am not going to ask any questions, because I have a few things that I want to respond. Here is one of the things, and it is in the testimony by Ms. Vaughan, but that nobody talks about. Nobody talks about. In addition there are a large in flow of illegal Cuban immigrants into Texas. A large flow? A large flow? Eight thousand? There are more people seeking refugee status from Cuba coming through the border, yes, the Texas border between Mexico and the United States, than any other single country that has been testified to here.

As a matter of fact, in the last year, 43,000 people, the immense majority of them coming through ports of entry to the United States of America, but nobody ever talks about them, and they get automatic—what do they get: automatic. Because you do not even ask them, right? As soon as they say, “I am from Cuba,” refugee status, and here is your green card and American citizenship 3 years later.

And by the way, why do you not have the food stamps and get on SSI and every other government ability to government service. But nobody has ever talked about that, and I think it is a shame that we are talking about the border and we do not talk about people seeking—children—as Ms. Young has—children fleeing drug cartels, fleeing murders, rapists, drug traffickers. Fleeing them for their very lives, and yet we have 43,000 people coming from Cuba; they are automatically given asylum in the United States with not one question asked. All they have to do is say they come, and they come through those ports of entry. And I think we all know why. We all know why. Because it is politics, when it comes to a certain group of people, and politics when it comes to another group of people, and I think that is shameful. Thank you very much, Mr. Chairman.

Mr. LABRADOR. The gentleman's time has expired. This concludes today's hearing.

Ms. LOFGREN. Mr. Chairman? May I ask unanimous consent to put into the record the data from the Border Patrol that I referred to earlier?

Mr. LABRADOR. Without objection.  
[The material referred to follows:]

**USBP Nationwide UAC Apprehensions by Requested Citizenship  
FY2009 - FY2016TD through December**

*Data includes Deportable Aliens Only*

Data Source: EID (Unofficial) FY10-FY15 as of End of Year Dates; FY09, FY16TD as of 2/1/16

| Citizenship  | FY2009        | FY2010        | FY2011        | FY2012        | FY2013        | FY2014        | FY2015        | FY2016TD      |
|--------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|---------------|
| BELIZE       | 2             | 1             | 3             | 4             | 3             | 21            | 1             | 1             |
| COSTA RICA   | 2             | 2             | 1             | 5             | 1             | 4             | 5             | 2             |
| EL SALVADOR  | 1,214         | 1,907         | 1,394         | 3,314         | 5,990         | 16,405        | 9,396         | 5,010         |
| GUATEMALA    | 1,114         | 1,501         | 1,567         | 3,835         | 8,068         | 17,068        | 13,599        | 6,464         |
| HONDURAS     | 960           | 1,023         | 977           | 2,997         | 6,747         | 18,253        | 5,414         | 2,769         |
| MEXICO       | 16,114        | 13,727        | 11,773        | 13,974        | 17,240        | 15,651        | 11,026        | 2,886         |
| NICARAGUA    | 18            | 35            | 14            | 43            | 97            | 213           | 83            | 52            |
| PANAMA       |               |               | 1             |               |               |               |               |               |
| <b>Total</b> | <b>19,424</b> | <b>18,196</b> | <b>15,730</b> | <b>24,172</b> | <b>38,146</b> | <b>67,615</b> | <b>39,524</b> | <b>17,184</b> |

Ms. LOFGREN. Thank you.

Mr. LABRADOR. That will be entered into the record. Anything else? This concludes today's hearing. Thanks to all of our witnesses. Just in closing, I agree that if somebody is coming here to seek asylum, they should be allowed to seek asylum. I think every one of the witnesses agrees with that. I just do not think that you should be coming here with a border search and use the excuse of asylum.

Mr. MCCRAW. Chairman, I want to say one thing. Often, the only one that rescues those children from those cartels and transnational gangs are the Border Patrol agents. A trooper or a deputy sheriff. If they stay in the custody of them when they go between the ports of entry, they are enslaved and I can give you numerous cases that will just rip your heart out in terms of what happens to children when they stay in the hands of Mexican cartels, and are not rescued by Border Patrol or deputy or a trooper.

Mr. LABRADOR. Thank you. Without objection, all Members will have 5 legislative days to submit additional written questions for the witnesses or additional materials for the record, and the hearing is now adjourned.

[Whereupon, at 10:30 a.m., the Subcommittee was adjourned.]



## A P P E N D I X

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MATERIAL SUBMITTED FOR THE HEARING RECORD

**Response to Questions for the Record from Brandon Judd, President,  
American Federation of Government Employees**



## **National Border Patrol Council**

**Committee on the Judiciary Questions Responses  
Brandon Judd**

- 1) The year 2014 was the high watermark for illegal crossing of unaccompanied alien minors and family units to date. In 2015, CBP had a concerted media campaign in Guatemala, El Salvador, and Honduras, informing the population that if they attempted to cross into the U.S. illegally, they would be detained. It is believed that this media campaign is what caused the decrease in 2015. However, there were still thousands of persons that attempted illegal entry. These persons in 2015 were ultimately released, as they were in 2014. The action did not comply with the concerted campaign and it spread; those who were released were able to go back to their communities and tell others that the campaign of detention if caught illegally crossing the border was not being carried out. In 2016, we are realizing the consequences of not following through on promised action and that is an increase in attempted illegal crossing of the border.
- 2) Yes, all cross border crime is controlled by criminal cartels. DHS Secretary Johnson is correct that most UACs are smuggled into the U.S. at a high price and the smugglers are controlled by criminal operations. The money being paid by these children's parents to have them smuggled is circulating through the drug cartels and other organized crime activity on the border, which will inevitably lead to an increase in border crime.
- 3) Yes, unaccompanied minors are being released to family members who are also here illegally. Many of these minors are then being forced into free labor by these same family members. They are being coerced into working on farms and ranches, when released by HHS to illegal immigrant family members.
- 4) This is verbal direction from direct supervisors and not a written policy. Agents are being told not to ask why minors are crossing. They are ordered to do the paperwork and pass them off and the processing centers in Tucson, Arizona and McAllen, Texas will corroborate this. This unwritten policy has been in effect since the increase of UACs being smuggled across the border caught national attention, sometime in late 2014. As Agents were informing their superiors that these families were paying for UACs to be smuggled across the border, the Agents were then being told not to question the children.

- 5) The Border Patrol has finite resources that we expect to be able to be used across the border. When these resources are stressed to the breaking point, like we are currently seeing in McAllen, Texas, holes along the border develop. These holes allow smugglers to exploit our operations because Agents are tied up taking UACs into custody and processing large groups of individuals who are crossing the border. Again and again I have testified that these smugglers could accomplish this same goal by taking these individuals and minors ports of entry. At these ports these people could present themselves legally and ask for asylum.
  - 6) On August 26, 2015, Border Patrol agent Andy Herdina, Thomas Nothhelsler, and I met with DHS Deputy Secretary Alejandro Mayorkas to discuss these exact concerns. Deputy Secretary Mayorkas told us that the Border Patrol needs to focus its resources towards the worst of the worst. He said that by prioritizing those we choose to deport, we will help alleviate the burden on an already overburdened court system. He further stated, "Why would we NTA those we have no intention of deporting?" He also stated, "We should not place someone in deportation proceedings, when the courts already have a 3-6 year back log." Since the day of this meeting, we have seen no improvements in our enforcement efforts and the morale of the Border Patrol Agents is one of, if not the lowest in the entire Federal Government.
  - 7) It is my belief that the catch and release and non-issuing of NTA simply amounts to amnesty. The vast majority of these individuals will never be sent back to their own countries for several reasons: first and most concerning, because we refuse to enforce our immigration laws. The second reason is because once released, these individuals disappear into communities throughout the United States to never be seen again.
  - 8) During the meeting with Deputy Secretary Mayorkas on August 26, 2015, Border Patrol Agent Andy Herdina informed Deputy Secretary Mayorkas that he personally was ordered to release a person he arrested and processed who had a criminal felony arrest record out of the state of Louisiana. The felony arrest was for domestic assault. Deputy Secretary Mayorkas was incredulous and asked that I get him the specific information of this case. Although Deputy Secretary Mayorkas asked me to get him this information, it took several days and several arguments with the office of Border Patrol Management before they would provide me the information. That information has since been sent to Deputy Secretary Mayorkas via Border Patrol Management Headquarters. This is just one example of thousands that have taken place throughout the Border Patrol, whether in Texas, California, Arizona, New Mexico, or the northern and coastal borders.
  - 9) I do not know who specifically in the Administration crafted this policy but it was conveyed to Agents verbally at musters shortly after the Administration announced their new enforcement priorities. Let me give you a real example that was recently brought to me. In the RGV sector the border is the Rio Grande River and illegal aliens must cross it to enter the United States. We have apprehended illegal aliens just north of the border who are still soaking wet from crossing the river. If they claim, as increasingly they are doing, that they have been here since January 1, 2014 we will process and then release them. They are still wet from the river and miles from any civilization and on their word alone we release them unless we physically saw them cross the river. This policy de facto creates an open border with Mexico for any illegal alien who wants to claim that they were here before 2014.
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**Response to Questions for the Record from Steven C. McCraw, Director,  
Texas Department of Public Safety**

Thank you again for the opportunity to testify before the Judiciary's Subcommittee on Immigration and Border Security on February 4, 2016. In response to your letter regarding that testimony, I am providing answers to the multiple questions posed to the Texas Department of Public Safety.

***Question 1: ...How will the 50 percent reduction in assets (re: U.S. Department of Homeland Security's (DHS) request to reduce persistent aerial detection, situational awareness and monitoring capability in support for Operation Phalanx from DOD for 2016) impact border security? What will it mean for Texas?***

The State of Texas provides extensive manpower, resources and oversight in support of Operation Phalanx, and expects the federal government to similarly fulfill its obligation to secure the border. Aerial observation is in fact so crucial to border security that in 2015 Texas Governor Greg Abbott has requested that DHS actually provide CBP with five additional Aerostats to operate on the Texas-Mexico border. Any decrease in aerial observation is not only imprudent, but contradicts the very mission of comprehensive border security enforcement. Such a decrease would unnecessarily place both state and federal law enforcement at an immediate disadvantage in combatting Mexican cartels and their operatives who are trafficking people and drugs across our porous border every day. The field of view of an aircraft is substantially wider than any other single platform currently being utilized to patrol the border. Additionally, aviation assets serve as a deterrent, detection and interdiction capability – which are critical components to protecting our communities from the impact of ruthless cartels. Just last month, Texas Governor Abbott joined Texas Congressman Henry Cuellar (whose district is losing 50 percent of the aerial surveillance aforementioned) in requesting that DHS explain why the federal government is pulling back on border enforcement.

***Question 2: ...Would you agree that the surge of illegal immigration along the southwest border in 2014 and this year has allowed these organizations to thrive in the border area, both in Mexico and the U.S.? Is it correct that the millions of dollars they are making in the smuggling and trafficking enterprises allows them to buy more drugs, guns, and protection from corrupt government officials in Mexico, which makes them more difficult to disrupt and dismantle? And does it make it more dangerous for law enforcement officers along the border?***

Cartels employ terrorism tactics, strategies and corruption to protect their criminal operations, and they pose a serious threat to Texas and the United States as well as to the domestic security of Mexico. Mexican cartels facilitate, control or benefit financially from all human smuggling activity along the Texas-Mexico border. The Texas Department of Public Safety recognizes that the influx of illegal immigrants from Central America and unaccompanied alien children requires significant attention from the men and women of the Border Patrol in Texas. We also know that the Mexican Cartels and criminal organizations take advantage of the distraction created when Border Patrol is overwhelmed by the influx of illegal immigrants – cartels further exploit the gaps along the border to continue committing crimes that benefit their business (including drug and human trafficking, sex trafficking of children, extortion, kidnapping, public corruption, etc.).

The continued unlawful smuggling of individuals into the United States boosts the profitability of Mexican Cartels – in turn providing them with continued power and influence throughout Mexico, Texas and the United States. In Mexico, the cartels engage in petroleum theft, kidnappings, robberies, human trafficking, extortions and murders for profit.

***Question 3: ...Does this “new normal” mean we can never achieve border security? If the Administration was as serious as Texas about border security, could it be achieved?***

Securing our nation’s border with Mexico is the sovereign responsibility of the federal government so the resources ought to be coming from the federal government – rather than the pockets of Texans who are essentially protecting the entire country simply because our geographic location places this problem directly in our backyard. But our state leaders have made it clear that doing nothing in the absence of sufficient federal action is not an option – not when the safety and security of Texas communities hangs in the balance.

We must understand the nature of the cartels as well as how they operate their business and unlawfully infiltrate the border on a daily basis in order to combat them. These criminal organizations are well organized, well-funded, and employ a military-style command and control structure, utilizing advanced weaponry, communications and counter surveillance measures. With all of these facets in mind, including their sophisticated operational structure, strategies and tactics, it is clear that border security is not an easy task but it can be done. Securing the border requires an ongoing commitment to bring the fight to the cartels every day at the border – an effort that may have aspects that are, at times, difficult to quantify but must be sustained over time to achieve the desired effect. Therefore, to “secure the border” a substantial amount of deterrent, detection and interdiction resources must be present along the border, operational 24/7/365, and communication and information sharing among law enforcement partners at the local, state and federal level must be seamless.

The Texas Department of Public Safety (DPS) will continue to provide direct assistance to U.S. Customs and Border Protection to deter, detect and interdict smuggling along the Texas/Mexico border through the deployment of an integrated network of detection and communication technologies and an increase in ground, air and marine interdiction assets. DPS will continue working with its local, state and federal partners and the Border Prosecution Unit – which is also funded by the State of Texas -- to degrade the smuggling infrastructure used by the cartel plaza bosses to smuggle drugs and people into Texas. The Texas Rangers, the Border Prosecution Unit and our federal partners together will deter smuggling related corruption along the border by increasing the number of public corruption investigations, arrests and prosecutions. DPS will work with its local and federal partners to target transnational criminal activity including drug trafficking, labor trafficking, sex trafficking and money laundering in key Texas transshipment and trafficking centers and other impacted areas throughout the state.

***Question 4: ...With nearly 40 years’ experience in law enforcement, would you say that deterrence has a significant impact on reducing lawless behavior? By sending a message to the aliens in El Salvador, Honduras, and Guatemala who would make the journey to our border that there will be consequences if they illegally enter, would that have a deterrent***

*effect? If aliens who illegally enter were arrested, detained and ultimately removed after being ordered removed to their native land by a judge, would that be a meaningful step toward achieving a secure border? Would that be a prudent thing to do by anyone interested in securing the border?*

With respect to policing and removal efforts, a sustained effort is needed to affect and maintain change.

I do have concerns with officials who refuse or fail to detain all criminal immigrants pursuant to the U.S. Immigration and Customs Enforcement federal detainer and removal program which is designed to prevent dangerous criminals from being released into Texas communities. It is essential that state, federal and local law enforcement work collaboratively to protect our fellow citizens and ensure that our laws are upheld.

Criminologists have come to understand the power of police patrols in detecting, deterring and disrupting crime.

Proactive patrolling – what we call “smart patrolling” – cannot be overstated if done correctly. It’s basic “Law Enforcement 101” that a highly visible law enforcement presence at the right place and the right time diminishes criminal activity. And the state has proven that time and again with border surge operations. Deterrence strategies and tactics have long proven to be a significant tool in fighting drug cartels and apprehensions along the border.

***Question 5: ...How vulnerable is our border to infiltration by terrorists?***

In an ever-changing threat environment where crime is increasingly transitory, transnational, organized, and discreet, and terrorism has become more disaggregated, we acknowledge the potential for lone individuals and home-grown terrorists motivated by extremist ideologies in addition to the significant threat posed by foreign-based entities.

Additionally, DPS has consistently maintained that an unsecure border is a vulnerability that can be exploited by criminals of all kinds. And it would be naïve to rule out the possibility that any criminal organization may look for opportunities to take advantage of security gaps along our international border.

An unsecure border with Mexico represents a grave national security vulnerability, and there have been documented incidents of foreign nationals with links to terrorism entering the U.S. from Mexico using existing human trafficking and human smuggling networks operated by the cartels, though not in an active conspiracy with the cartels.

Information related to these threats is contained in a recent study produced by a Texas DPS Senior Analyst as part of his graduate research at the U.S. Naval Postgraduate School (NPS) for Homeland Security and Defense can be found at: <http://bit.ly/1UD4lrt>.

For example, it is important to consider the general scope and volume of Special Interest Alien (SIA) smuggling, which is outlined in the NPS study and indicates that several thousand SIAs – that is, migrants from 35 to 40 countries of interest where Islamic terrorist organizations operate – have been apprehended reaching the southwest land border each year since 9/11 (pp. 16-17 of the study), smuggled through Latin America and Mexico, at a relatively consistent annual average volume.

Also according to the study, an example of what's happening in Texas alone can be illustrated by a report citing U.S. Customs and Border Protection data, asserting that more than 740 encounters with SIAs just in Texas reflected a 15 percent increase over the same period in 2014 – among them migrants from Afghanistan, Bangladesh, Egypt, Iran, Iraq, Lebanon, Pakistan, Somalia, and Turkey. These are just the individuals who were apprehended. As indicated in the study, unknown numbers of SIAs slip over the border, and some may or may not be caught at some future point in the interior of the country.

As you can imagine, the department and our Governor are profoundly concerned about these security vulnerabilities.

In closing, I would like to again thank the members of the Judiciary Committee and the Judiciary's Subcommittee on Immigration and Border Security for your unwavering commitment to securing our nation's borders, and I appreciate the opportunity to have discussed this important issue of national security with all of you.

Sincerely,

Steven McCraw  
Director  
Texas Department of Public Safety



**Response to Questions for the Record from Jessica M. Vaughan,  
Director of Policy Studies, Center for Immigration Studies**

“Another Surge of Illegal Immigrants Along the Southwest Border:  
Is this the Obama Administration’s New Normal?”

House Judiciary /Immigration and Border Security Subcommittee  
February 4, 2016

Responses for the Record

Jessica M. Vaughan  
Director of Policy Studies  
Center for Immigration Studies  
April 7, 2016

1. Are the Obama administration policies that reportedly direct Border Patrol agents to allow adult illegal entrants they encounter to “walk out the door” rather than be processed for removal contrary to the written DHS prioritization policy that went into effect on November 14, 2014? Isn’t it standard practice for them to be placed into removal proceedings? What would be the reason that such aliens are not placed in removal proceedings?

According to the DHS Civil Immigration Enforcement Policies that went into effect on November 14, 2014, an alien is a Priority 1 case if “apprehended at the border or ports of entry while attempting to unlawfully enter the United States.” An illegal border crosser would be a Priority 2 case if “apprehended anywhere in the U.S. [such as a Border Patrol check-point] after unlawfully entering or re-entering the U.S. and who cannot establish to the satisfaction of an immigration officer that they have been physically present in the United States continuously since January 1, 2014.”

Therefore, under these priorities (and, more importantly, under the law), Border Patrol agents should be placing these aliens into removal proceedings if they are apprehended or encountered at the border, port of entry, or in the interior. Even if they were to request asylum, they still would be placed in removal proceedings. Even if they are not detained, the vast majority of illegal crossers still would be placed in removal proceedings, unless they were granted parole (an option that is very rarely used by Border Patrol agents). So when, as Agent Judd testified, Border Patrol agents are told to allow apprehended aliens to “walk out the door” without being placed into proceedings, that is contrary to the written DHS policies that Obama administration officials say are now in effect.

Only DHS can provide an explanation for why agents have been told not to process recent border crossers, even though they clearly fall within the top enforcement priorities. I cannot think of a good reason to release newly arrived illegal aliens, especially without a Notice to Appear. Experience shows that such a policy serves only to encourage people to attempt illegal entry, to enrich the criminal smuggling organizations that facilitate it, and to increase the costs and burdens on taxpayers in the communities where they settle.

The only small consolation to the American public for this catch and release policy is that if these illegal aliens are not placed into deportation proceedings, then at least they will not be offered work permits, relief from deportation, or other benefits that have been inappropriately granted by the Obama administration to large numbers of other illegal aliens who are “in proceedings.”

2. When Border Patrol Agents are ordered not to initiate removal proceedings against illegal aliens unless they have been convicted of a felony, would that mean that gang members who have not been convicted of crimes might not be removed?

Yes. This is a serious problem that applies to all border criminal encounters, but particularly with respect to gang members. Numerous Border Patrol agents have stated on the record that they are encountering increasing numbers of gang members crossing illegally, many of whom are classified by policy as "unaccompanied minors." Law enforcement agencies in communities where newly arrived illegal alien Central American youths have been resettled have reported that members of existing gangs, especially MS-13, are taking advantage of lax border security to recruit youths from El Salvador and other places to join their gangs or cliques.

Particularly with gang members, the lack of a felony conviction provides no assurance whatsoever that an individual is harmless and not a risk to public safety. There are many possible scenarios in which a Border Patrol agent might be forced to release a dangerous gang member under this policy. For example, an illegal alien gang member who was removed from the country, perhaps after serving a sentence for a misdemeanor such as assault, drug possession, petty theft, drunk driving, graffiti, threats; or any number of serious offenses committed as a juvenile; or have pled down to lesser offenses due to state policies to relieve jail crowding; or after case dismissal due to witness intimidation or compromised evidence; or who has committed crimes in his home country, and then attempt illegal re-entry to reunite with the gang or with family still in the United States. If apprehended, under this policy an alien with any of these derogatory records would have to be released.

By definition, any gang member or associate should be considered a ticking time bomb and an inherent threat to public safety, regardless of the level or convictions or charges they may already have on their record. The gangs with which these illegal aliens are associated demand violent criminal behavior from all of their members and associates; it is not optional; it is part of who and what they are. Moreover, besides the violence and crime they cause, gangs are a unique threat to the community because they are constantly recruiting and coercing vulnerable young people to join their ranks. To release or excuse known or suspected gang members because they have yet to be convicted of a felony is inviting problems and creating new victims.

3. Why would an alien gang member, who has no legal status, not be issued a detainer by ICE or arrested by ICE for removal proceedings, if he was arrested for separate violent felonies like armed robbery? This is the policy of the Obama Administration, correct?

According to the written policies of the Obama administration, gang members are a top priority for enforcement, specifically under Priority 1(c) of the aforementioned priorities, if they have convictions for a gang-related offense as defined by 18 USC 521(a), or, regardless of whether they have prior convictions, if they are older than 16 and have intentionally participated in the gang to further its criminal activity. It is important to note that 18 USC 521(a) is an out-dated and overly narrow standard to use in defining criminal street gang crime. This definition includes only felony drug crimes and felony crimes of violence and excludes many of the crimes that are commonly committed by criminal gangs today. The crimes not covered include extortion, identity theft, vehicle theft, alien smuggling, obstruction of justice, witness intimidation, threats and many other crimes typically committed by gang members. However, I believe that the second part of the priority language offers ample leeway for DHS officers to remove deportable gang members just because they are gang members, which is the appropriate policy, for the reasons I described above.

I am familiar with the details of both of the cases mentioned in the question, and have read the police reports and court documents. There was no doubt about the gang affiliations of the offenders, and some of the aliens who, before being charged with murder or deadly assault, had serious prior charges, including assaults and armed robbery, for which they evaded prosecution and immigration enforcement. In at least two of the cases, the offenders had evaded prosecution due to witness intimidation, and in some cases, the aliens had failed to appear for criminal proceedings after release on bond. These are cases in

which ICE's self-imposed requirement of waiting for convictions actually serves to protect the criminal alien from consequences while endangering the public and creating new victims.

Based on conversations I have had with ICE officers in the field about the real-life application of the written priorities, I believe that detainers were not issued in these and similar cases because deportation officers are told that, regardless of the specific circumstances of the case, and regardless of any language in the stated priorities that says they have discretion, no matter what, if the alien has not yet been convicted of a crime that is deemed to be serious according to the definition handed down by ICE and DHS headquarters, they must refrain from initiating deportation. With respect to Central American illegal alien youths who are classified as "unaccompanied minors," from what I have observed it appears that ICE policy is to allow the alien to remain until the years-long immigration court proceedings have concluded, even if the alien youth is accumulating a criminal record.

One ICE deportation officer told me, "If one of us places a detainer on a non-priority case, we get \*\*\*\* on all the way from Washington. There is no way on God's green earth that we have the ability to place detainers on non-priority aliens." And: "I can tell you first hand that they have taken all the discretion away from the individual officers. I had to get three levels of management to approve of me arresting an alien who [credibly made extremely violent threats against a person of authority]." Officers say that officials in headquarters closely monitor all enforcement activity in the field offices and browbeat field office managers and supervisors if they think that any deportation officers are straying beyond the most narrow interpretation of the priorities. President Obama himself has said that ICE officers who do not follow the priorities will face "consequences."

ICE statistics confirm that there is little discretion being exercised to go outside of the letter of the enforcement priorities. According to ICE's FY2015 report on removals, 98 percent of all deportation cases adhered to the stated enforcement priorities (<https://www.ice.gov/removal-statistics>).

4. How can the Administration welcome vast numbers of unaccompanied minors and then allow them to be subjected to abuse, such as placing them with human traffickers, abusers, or criminals?

The placement of illegal alien youths in abusive and exploitative situations is a scandal. It was made possible by two factors. First, the huge numbers of new illegal arrivals who were drawn to the United States by lax policies allowing them to be resettled simply overwhelmed the agencies that were tasked with processing them. But more importantly, the administration deliberately adopted placement practices that were deliberately and negligently loose – because the administration thought it was more important to release the youths as quickly as possible than it was to be sure that they were being released into a safe living situation. The prioritization of speed in processing over safety and security is characteristic of all aspects of immigration benefits administration under President Obama, whether for fiancée visas, tourist visas, work permits, deferred action, or refugees.

Further, the emphasis on speedy processing fit the false narrative put out by the administration that portrayed the influx of Central Americans as a humanitarian crisis of desperate people in need of safe haven. In fact, as others have testified, the statements of the migrants themselves indicate that most are coming to join family or friends who are already living here, usually illegally, or simply because they know they will be allowed to stay indefinitely under Obama administration policies.

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